

112TH CONGRESS  
1ST SESSION

# H. R. 2303

To concentrate Federal resources aimed at the prosecution of drug offenses on those offenses that are major.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 2011

Ms. WATERS (for herself, Mr. COHEN, Ms. JACKSON LEE of Texas, Mr. CARSON of Indiana, Ms. SCHAKOWSKY, Mr. PAYNE, Mr. SCOTT of Virginia, Mr. FRANK of Massachusetts, and Mr. FILNER) 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

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## A BILL

To concentrate Federal resources aimed at the prosecution of drug offenses on those offenses that are major.

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 “Major Drug Traf-  
5 ficking Prosecution Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1           (1) Mandatory minimum sentences are statu-  
2           torily prescribed terms of imprisonment that auto-  
3           matically attach upon conviction of certain criminal  
4           conduct, usually pertaining to drug or firearm of-  
5           fenses. Absent very narrow criteria for relief, a sen-  
6           tencing judge is powerless to mandate a term of im-  
7           prisonment below the mandatory minimum. Manda-  
8           tory minimum sentences for drug offenses rely solely  
9           upon the weight of the substance as a proxy for the  
10          degree of involvement of a defendant's role.

11          (2) In the Anti-Drug Abuse Act of 1986, and  
12          at the height of the public outcry over crack-cocaine,  
13          Congress acted hastily, without sufficient hearings,  
14          and enacted hard line penalties that targeted low-  
15          level drug offenders. These penalties included new,  
16          long mandatory minimum sentences for such offend-  
17          ers.

18          (3) According to the Bureau of Prisons, in  
19          1986, when the new drug law containing lengthy  
20          mandatory minimum sentences passed, the prison  
21          population was 36,000. Today, the Federal prison  
22          population is over 215,000 prisoners, up almost 600  
23          percent in 26 years.

1           (4) According to the Bureau of Prisons, the  
2 cost to keep one prisoner in Federal prison for one  
3 year is approximately \$26,000.

4           (5) According to the Department of Justice,  
5 since the enactment of mandatory minimum sen-  
6 tencing for drug users, the Federal Bureau of Pris-  
7 ons budget increased from \$994 million in 1987 to  
8 almost \$6.2 billion in 2009.

9           (6) According to the U.S. Sentencing Commis-  
10 sion, between 1995 and 2010, over 400,000 drug of-  
11 fenders were sentenced under Federal law; of these,  
12 almost 250,000 (61 percent) received mandatory  
13 minimum sentences.

14           (7) According to the U.S. Sentencing Commis-  
15 sion, drug offenders released from prison in 1986  
16 who had been sentenced before the adoption of man-  
17 datory sentences and sentencing guidelines had  
18 served an average of 22 months in prison. In 2010,  
19 almost two-thirds of all drug offenders received a  
20 mandatory sentence, with most receiving a 10-year  
21 minimum. Most of these offenders are nonviolent or  
22 lower-level offenders with little or no criminal his-  
23 tory: in 2010, 51.6 percent had few or no prior con-  
24 victions, 83.6 percent did not have weapons involved

1 in their offense, and only 6 percent were considered  
2 leaders, managers, or supervisors of drug operations.

3 (8) Mandatory minimum sentences have con-  
4 sistently been shown to have a disproportionate im-  
5 pact on African-Americans. The United States Sen-  
6 tencing Commission, in a 15-year overview of the  
7 Federal sentencing system, concluded that “manda-  
8 tory penalty statutes are used inconsistently” and  
9 disproportionately affect African-American defend-  
10 ants. African-American drug defendants are 20 per-  
11 cent more likely to be sentenced to prison than  
12 White drug defendants.

13 (9) According to the U.S. Sentencing Commis-  
14 sion, between 1994 and 2003, the average time  
15 served by African-Americans for a drug offense in-  
16 creased by 62 percent, compared to a 17 percent in-  
17 crease among White drug defendants.

18 (10) According to the Substance Abuse and  
19 Mental Health Services Administration, government  
20 surveys document that drug use is roughly con-  
21 sistent across racial and ethnic groups. While there  
22 is less data available regarding drug sellers, research  
23 from the Office of National Drug Control Policy and  
24 the National Institute of Justice has found that  
25 drug users generally buy drugs from someone of

1 their own racial or ethnic background. But, accord-  
2 ing to the U.S. Sentencing Commission, over 70 per-  
3 cent of all Federal narcotics offenders sentenced  
4 each year are African-Americans and Hispanic  
5 Americans, many of whom are low-level offenders.

6 (11) As a result of Federal prosecutors' focus  
7 on low-level drug offenders, the overwhelming major-  
8 ity of individuals subject to the heightened crack co-  
9 caine penalties are African-American. According to  
10 the U.S. Sentencing Commission's 2007 Report to  
11 Congress on crack cocaine, only 8.8 percent of Fed-  
12 eral crack cocaine convictions were imposed on  
13 White Americans, while 81.8 percent and 8.4 per-  
14 cent were imposed on African-American and His-  
15 panics, respectively.

16 (12) According to the U.S. Census, African-  
17 Americans comprise 12 percent of the U.S. popu-  
18 lation and, according to the Substance Abuse and  
19 Mental Health Services Administration, about 10  
20 percent of all drug users, but almost 30 percent of  
21 all Federal drug convictions according to the U.S.  
22 Sentencing Commission.

23 (13) According to the U.S. Sentencing Commis-  
24 sion, African-Americans, on average, now serve al-  
25 most as much time in Federal prison for a drug of-

1       fense (58.7 months) as Whites do for a violent of-  
2       fense (61.7 months).

3           (14) According to the U.S. Sentencing Commis-  
4       sion, in 2010, almost 30 percent of women entering  
5       Federal prison did so for a drug offense. Linking  
6       drug quantity with punishment severity has had a  
7       particularly profound impact on women, who are  
8       more likely to play peripheral roles in a drug enter-  
9       prise than men. However, because prosecutors can  
10      attach drug quantities to an individual regardless of  
11      the level of a defendant's participation in the  
12      charged offense, women have been exposed to in-  
13      creasingly punitive sentences to incarceration.

14          (15) Low-level and mid-level drug offenders can  
15      be adequately prosecuted by the States and punished  
16      or supervised in treatment as appropriate.

17          (16) The Departments of Justice, Treasury,  
18      and Homeland Security are the agencies with the  
19      greatest capacity to investigate, prosecute and dis-  
20      mantle the highest level of drug trafficking organiza-  
21      tions. Low-level drug offender investigations and  
22      prosecutions divert Federal personnel and resources  
23      from prosecuting high-level traffickers.

24          (17) Congress must have the most current in-  
25      formation on the number of prosecutions of high-

1 level and low-level drug offenders in order to prop-  
2 erly reauthorize Federal drug enforcement programs.

3 (18) Congress has an obligation to taxpayers to  
4 use sentencing policies that are cost-effective and in-  
5 crease public safety, in addition to establishing a  
6 criminal justice system that is fair, efficient and pro-  
7 vides just sentences for offenders. Mandatory sen-  
8 tences have not been conclusively shown to reduce  
9 recidivism or deter crime.

10 (19) Prisons are important and expensive; the  
11 limited resources in the Federal criminal justice sys-  
12 tem should be used to protect society by incapaciti-  
13 ating dangerous and violent offenders who pose a  
14 threat to public safety. The Federal judiciary has  
15 the expertise and is in the best position to sentence  
16 each offender and determine who should be sent to  
17 Federal prisons and the amount of time each of-  
18 fender should serve.

19 **SEC. 3. APPROVAL OF CERTAIN PROSECUTIONS BY ATTOR-**  
20 **NEY GENERAL.**

21 A Federal prosecution for an offense under the Con-  
22 trolled Substances Act, the Controlled Substances Import  
23 and Export Act, or for any conspiracy to commit such an  
24 offense, where the offense involves the illegal distribution  
25 or possession of a controlled substance in an amount less

1 than that amount specified as a minimum for an offense  
2 under section 401(b)(1)(A) of the Controlled Substances  
3 Act (21 U.S.C. 841(b)(1)(A)) or, in the case of any sub-  
4 stance containing cocaine or cocaine base, in an amount  
5 less than 500 grams, shall not be commenced without the  
6 prior written approval of the Attorney General.

7 **SEC. 4. MODIFICATION OF CERTAIN SENTENCING PROVI-**  
8 **SIONS.**

9 (a) SECTION 404.—Section 404(a) of the Controlled  
10 Substances Act (21 U.S.C. 844(a)) is amended—

11 (1) by striking “not less than 15 days but”;

12 (2) by striking “not less than 90 days but”;

13 and

14 (3) by striking the sentence beginning “The im-  
15 position or execution of a minimum sentence”.

16 (b) SECTION 401.—Section 401(b) of the Controlled  
17 Substances Act (21 U.S.C. 841(b)) is amended—

18 (1) in paragraph (1)(A)—

19 (A) by striking “which may not be less  
20 than 10 years and or more than” and inserting  
21 “for any term of years or for”;

22 (B) by striking “and if death” the first  
23 place it appears and all that follows through  
24 “20 years or more than life” the first place it  
25 appears;



1 (C) by striking “which may not be less  
2 than 20 years and not more than life imprison-  
3 ment” and inserting “for any term of years or  
4 for life”;

5 (D) by inserting “imprisonment for any  
6 term of years or” after “if death or serious bod-  
7 ily injury results from the use of such substance  
8 shall be sentenced to”;

9 (E) by striking the sentence beginning “If  
10 any person commits a violation of this subpara-  
11 graph”; and

12 (F) by striking the sentence beginning  
13 “Notwithstanding any other provision of law”  
14 and the sentence beginning “No person sen-  
15 tenced”; and

16 (2) in paragraph (1)(B)—

17 (A) by striking “which may not be less  
18 than 5 years and” and inserting “for”;

19 (B) by striking “not less than 20 years or  
20 more than” and inserting “for any term of  
21 years or to”;

22 (C) by striking “which may not be less  
23 than 10 years and more than” and inserting  
24 “for any term of years or for”;

1 (D) by inserting “imprisonment for any  
2 term of years or to” after “if death or serious  
3 bodily injury results from the use of such sub-  
4 stance shall be sentenced to”; and

5 (E) by striking the sentence beginning  
6 “Notwithstanding any other provision of law”.

7 (c) SECTION 1010.—Section 1010(b) of the Con-  
8 trolled Substances Import and Export Act (21 U.S.C.  
9 960(b)) is amended—

10 (1) in paragraph (1)—

11 (A) by striking “of not less than 10 years  
12 and not more than” and inserting “for any  
13 term of years or for”;

14 (B) by striking “and if death” the first  
15 place it appears and all that follows through  
16 “20 years and not more than life” the first  
17 place it appears;

18 (C) by striking “of not less than 20 years  
19 and not more than life imprisonment” and in-  
20 serting “for any term of years or for life”;

21 (D) by inserting “imprisonment for any  
22 term of years or to” after “if death or serious  
23 bodily injury results from the use of such sub-  
24 stance shall be sentenced to”; and

1 (E) by striking the sentence beginning  
2 “Notwithstanding any other provision of law”;  
3 and  
4 (2) in paragraph (2)—

5 (A) by striking “not less than 5 years  
6 and”;

7 (B) by striking “of not less than twenty  
8 years and not more than” and inserting “for  
9 any term of years or for”;

10 (C) by striking “of not less than 10 years  
11 and not more than” and inserting “for any  
12 term of years or to”;

13 (D) by inserting “imprisonment for any  
14 term of years or to” after “if death or serious  
15 bodily injury results from the use of such sub-  
16 stance shall be sentenced to”; and

17 (E) by striking the sentence beginning  
18 “Notwithstanding any other provision of law”.

19 (d) SECTION 418.—Section 418 of the Controlled  
20 Substances Act (21 U.S.C. 859) is amended by striking  
21 the sentence beginning “Except to the extent” each place  
22 it appears and by striking the sentence beginning “The  
23 mandatory minimum”.

24 (e) SECTION 419.—Section 419 of the Controlled  
25 Substances Act (21 U.S.C. 860) is amended by striking

1 the sentence beginning “Except to the extent” each place  
2 it appears and by striking the sentence beginning “The  
3 mandatory minimum”.

4 (f) SECTION 420.—Section 420 of the Controlled  
5 Substances Act (21 U.S.C. 861) is amended—

6 (1) in each of subsections (b) and (c), by strik-  
7 ing the sentence beginning “Except to the extent”;

8 (2) by striking subsection (e); and

9 (3) in subsection (f), by striking “, (c), and (e)”  
10 and inserting “and (c)”.

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