

112TH CONGRESS
1ST SESSION

H. R. 2316

To apply reduced sentences for certain cocaine base offenses retroactively for certain offenders, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2011

Mr. SCOTT of Virginia (for himself, Mr. PAUL, Mr. CONYERS, Mr. BARTLETT, Mr. HASTINGS of Florida, and Mr. ELLISON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To apply reduced sentences for certain cocaine base offenses retroactively for certain offenders, and for other purposes.

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 “Fair Sentencing Clari-
5 fication Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds as follows:

8 (1) The Fair Sentencing Act of 2010 was
9 signed into law by President Obama on August 3,
10 2010.

1 (2) Most district courts in the United States
2 are applying the Fair Sentencing Act to pending
3 criminal cases, including *United States v. Douglas*,
4 746 F. Supp. 2d. 220 (D. Me. 2010), ____ F. 3d.
5 ____, 2011 WL 2120163 (1st Cir. May 31, 2011);
6 *United States v. Raymond Brown*, CR No. 10–135–
7 GLL–1 (W.D. Pa. June 16, 2011); and *United*
8 *States v. Marlon Jermaine Spencer*, CR No. 09–
9 400–JW–1 (N.D. Cal. Nov. 30, 2010).

10 (3) There are, however, district courts that are
11 not applying the Fair Sentencing Act to pending
12 cases, including *United States v. Derrick Steven*
13 *Clemons*, CR No. 08–028–AJS–1 (W.D. of Pa. Nov.
14 18, 2010) and *United States v. Anthony L. Jackson*,
15 CR No. 10–178–JRS–1 (E.D. Va. Nov. 19, 2010).

16 (4) According to the U.S. Sentencing Commis-
17 sion’s analysis, 20,905 offenders would receive a re-
18 duction in their sentences if both the statutory
19 changes and guideline changes were made retro-
20 active, and the average sentence reduction would be
21 46 months, representing a savings of over \$2.2 bil-
22 lion at an average incarceration cost of \$28,284 per
23 year, the latest yearly cost estimate from the Bureau
24 of Prisons.

1 (5) The purpose of this Act is to clarify that
2 the amendments made by the Fair Sentencing Act
3 are to be applied to pending cases and retroactively
4 to cases that are no longer pending.

5 **SEC. 3. CLARIFICATION OF APPLICABILITY WITH REGARD**
6 **TO PENDING CASES.**

7 With respect to any offense for which the penalties
8 were modified by section 2 or 3 of the Fair Sentencing
9 Act of 2010 (Public Law 111–220) and which was com-
10 mitted before the date of enactment of such Act, and not-
11 withstanding the provisions of section 109 of title 1,
12 United States Code—

13 (1) in cases in which a sentence has not yet
14 been imposed, the court shall impose such sentence
15 as if sections 2 and 3 of the Fair Sentencing Act of
16 2010 (Public Law 111–220) were in effect on the
17 date the offense was committed; and

18 (2) in cases in which a sentence has already
19 been imposed, if subject to a pending appeal on or
20 after August 3, 2010, the Court of Appeals shall re-
21 mand the case for resentencing consistent with the
22 amendments made by sections 2 and 3 of the Fair
23 Sentencing Act of 2010 (Public Law 111–220).

1 **SEC. 4. COURT MAY REDUCE TERM OF IMPRISONMENT.**

2 In the case of a defendant who has been convicted
3 of a crime committed before August 3, 2010, for which
4 a term of imprisonment has been imposed, on motion of
5 the defendant or the Director of the Bureau of Prisons,
6 or on its own motion, the sentencing court may reduce
7 the term of imprisonment for that crime consistent with
8 the amendments made by sections 2 and 3 of the Fair
9 Sentencing Act of 2010 (Public Law 111–220) if such
10 crime is—

11 (1) punishable by a term of imprisonment
12 under—

13 (A) section 404(a) of the Controlled Sub-
14 stances Act for possession of a substance which
15 contains cocaine base (21 U.S.C. 844(a)) (as in
16 effect on the date of the commission of the
17 crime);

18 (B) section 401(b)(1)(A)(iii) of such Act
19 (21 U.S.C. 841(b)(1)(A)(iii)) (as in effect on
20 the date of the commission of the crime); or

21 (C) section 401(b)(1)(B)(iii) of such Act
22 (21 U.S.C. 841(b)(1)(B)(iii)) (as in effect on
23 the date of the commission of the crime); or

24 (2) punishable by a term of imprisonment
25 under paragraph (1)(C) or (2)(C) of section 1010(b)
26 of the Controlled Substances Import and Export Act

1 (21 U.S.C. 960(b)) (as in effect on the date of the
2 commission of the crime).

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