

117TH CONGRESS
1ST SESSION

S. 1013

To focus limited Federal resources on the most serious offenders.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 2021

Mr. DURBIN (for himself, Mr. LEE, Mr. LEAHY, Mr. WHITEHOUSE, Mr. WYDEN, Mr. BLUMENTHAL, Ms. BALDWIN, Mr. BOOKER, Ms. WARREN, Mr. SANDERS, Mr. KING, Mr. KAINE, and Mr. WICKER) 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 2021”.

1 **SEC. 2. 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)—

7 (A) by redesignating paragraph (58) as
8 paragraph (59);

9 (B) by redesignating the second paragraph
10 (57) (relating to “serious drug felony”) as
11 paragraph (58); and

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

13 “(60) The term ‘courier’ means a defendant
14 whose role in the offense was limited to transporting
15 or storing drugs or money.”; and

16 (2) in section 401(b)(1) (21 U.S.C.
17 841(b)(1))—

18 (A) in subparagraph (A), in the flush text
19 following clause (viii)—

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

22 (ii) by striking “15 years” and insert-
23 ing “10 years”; and

24 (B) in subparagraph (B), in the flush text
25 following clause (viii)—

- 1 (i) by striking “5 years” and inserting
2 “2 years”; and
3 (ii) by striking “not be less than 10
4 years” and inserting “not be less than 5
5 years”.

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

9 (1) in paragraph (1), in the flush text following
10 subparagraph (H)—

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

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

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

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

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

(B) by striking “person commits” and inserting “person, other than a courier, commits”; and

(C) by inserting “If a person who is a courier commits such a violation, the person shall be sentenced to a term of imprisonment of not less than 2 years and not more than life. If a person who is a courier commits such a violation after a prior conviction for a felony drug offense has become final, the person shall be sentenced to a term of imprisonment of not less than 5 years and not more than life.” before “Notwithstanding section 3583”.

(c) APPLICABILITY TO PENDING AND PAST CASES.—

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

(2) PENDING CASES.—This section, and the amendments made by this section, shall apply to any

1 sentence imposed after the date of enactment of this
2 Act, regardless of when the offense was committed.

3 (3) PAST CASES.—In the case of a defendant
4 who, before the date of enactment of this Act, was
5 convicted or sentenced for a covered offense, the sen-
6 tencing court may, on motion of the defendant, the
7 Bureau of Prisons, the attorney for the Government,
8 or on its own motion, impose a reduced sentence
9 after considering the factors set forth in section
10 3553(a) of title 18, United States Code.

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

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

23 (b) CONSIDERATIONS.—In carrying out this section,
24 the United States Sentencing Commission shall con-
25 sider—

1 (1) the mandate of the United States Sen-
2 tencing Commission, under section 994(g) of title
3 28, United States Code, to formulate the sentencing
4 guidelines in such a way as to “minimize the likeli-
5 hood that the Federal prison population will exceed
6 the capacity of the Federal prisons”;

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

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

15 (4) the relevant public safety concerns involved
16 in the considerations before the United States Sen-
17 tencing Commission;

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

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

24 (c) EMERGENCY AUTHORITY.—The United States
25 Sentencing Commission shall—

1 (1) promulgate the guidelines, policy state-
2 ments, or amendments provided for in this Act as
3 soon as practicable, and in any event not later than
4 120 days after the date of enactment of this Act, in
5 accordance with the procedure set forth in section
6 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994
7 note), as though the authority under that Act had
8 not expired; and

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

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

16 Not later than 6 months after the date of enactment
17 of this Act, the Attorney General shall submit to the Com-
18 mittees on the Judiciary of the House of Representatives
19 and the Senate a report outlining how the reduced expend-
20 itures on Federal corrections and the cost savings result-
21 ing from this Act will be used to help reduce overcrowding
22 in the Federal Bureau of Prisons, help increase proper in-
23 vestment in law enforcement and crime prevention, and
24 help reduce criminal recidivism, thereby increasing the ef-
25 fectiveness of Federal criminal justice spending.

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

2 (a) DEFINITIONS.—In this section—

3 (1) the term “criminal regulatory offense”
4 means a Federal regulation that is enforceable by a
5 criminal penalty; and

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

8 (b) REPORT ON CRIMINAL STATUTORY OFFENSES.—

9 Not later than 1 year after the date of enactment of this
10 Act, the Attorney General shall submit to the Committee
11 on the Judiciary of the Senate and the Committee on the
12 Judiciary of the House of Representatives a report, which
13 shall include—

14 (1) a list of all criminal statutory offenses, in-
15 cluding a list of the elements for each criminal stat-
16 utory offense; and

17 (2) for each criminal statutory offense listed
18 under paragraph (1)—

19 (A) the potential criminal penalty for the
20 criminal statutory offense;

21 (B) the number of prosecutions for the
22 criminal statutory offense brought by the De-
23 partment of Justice each year for the 15-year
24 period preceding the date of enactment of this
25 Act; and

1 (C) the mens rea requirement for the
2 criminal statutory offense.

3 (c) REPORT ON CRIMINAL REGULATORY OF-
4 FENSES.—

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

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

13 (B) for each criminal regulatory offense
14 listed under subparagraph (A)—

15 (i) the potential criminal penalty for a
16 violation of the criminal regulatory offense;

17 (ii) the number of violations of the
18 criminal regulatory offense referred to the
19 Department of Justice for prosecution in
20 each of the years during the 15-year period
21 preceding the date of enactment of this
22 Act; and

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

1 (2) AGENCIES DESCRIBED.—The Federal agen-
2 cies described in this paragraph are the Department
3 of Agriculture, the Department of Commerce, the
4 Department of Education, the Department of En-
5 ergy, the Department of Health and Human Serv-
6 ices, the Department of Homeland Security, the De-
7 partment of Housing and Urban Development, the
8 Department of the Interior, the Department of
9 Labor, the Department of Transportation, the De-
10 partment of the Treasury, the Commodity Futures
11 Trading Commission, the Consumer Product Safety
12 Commission, the Equal Employment Opportunity
13 Commission, the Export-Import Bank of the United
14 States, the Farm Credit Administration, the Federal
15 Communications Commission, the Federal Deposit
16 Insurance Corporation, the Federal Election Com-
17 mission, the Federal Labor Relations Authority, the
18 Federal Maritime Commission, the Federal Mine
19 Safety and Health Review Commission, the Federal
20 Trade Commission, the National Labor Relations
21 Board, the National Transportation Safety Board,
22 the Nuclear Regulatory Commission, the Occupa-
23 tional Safety and Health Review Commission, the
24 Office of Compliance, the Postal Regulatory Com-
25 mission, the Securities and Exchange Commission,

1 the Securities Investor Protection Corporation, the
2 Environmental Protection Agency, the Small Busi-
3 ness Administration, the Federal Housing Finance
4 Agency, and the Office of Government Ethics.

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

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

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

19 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
20 tion shall be construed to require or authorize appropria-
21 tions.

