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S. 5193

To enable incarcerated persons to petition a Federal court for a second look at sentences longer than 10 years, where the person is not a danger to the safety of any person or the community and has shown they are ready for reentry, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2022

Mr. BOOKER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To enable incarcerated persons to petition a Federal court for a second look at sentences longer than 10 years, where the person is not a danger to the safety of any person or the community and has shown they are ready for reentry, 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 “Second Look Act of
5 2022”.

1 **SEC. 2. FINDINGS.**

2 (a) FINDINGS RELATED TO THE UNITED STATES
3 CRIMINAL JUSTICE SYSTEM.—Congress finds the fol-
4 lowing:

5 (1) Although the United States has less than 5
6 percent of the world's population, the United States
7 holds approximately 19 percent of the world's incar-
8 cerated population and has the highest rate of incar-
9 ceration in the world, with more than 1,700,000
10 people incarcerated in State and Federal prisons and
11 local jails.

12 (2) The prison population of the United States
13 has increased by more than 270 percent over a 40-
14 year period preceding the date of enactment of this
15 Act.

16 (3) The United States incarcerates citizens of
17 the United States at 5 to 10 times the rate of other
18 industrialized nations.

19 (4) The face of incarceration in the United
20 States is not exclusively male. Although less than 5
21 percent of women in the world live in the United
22 States, the United States houses nearly 30 percent
23 of the world's incarcerated women.

24 (5) The growth of the incarceration of women
25 in the United States has outpaced that of men by
26 nearly 2-to-1, growing more than 475 percent be-

1 tween 1980 and 2020. Fifty-eight percent of incar-
2 cerated women are mothers of minor children and
3 most are the primary caretakers for their children.

4 (6) The overall prison population of the United
5 States peaked in 2009 and declined at an annual
6 rate of 1 percent during the subsequent decade. At
7 this pace, it would take until 2078, or 56 years, to
8 reduce the prison population by 50 percent.

9 (7) In 2020, the prison population declined by
10 15 percent in response to safety precautions related
11 to the COVID–19 pandemic, but some prison popu-
12 lations have since bounced back up.

13 (8) Nearly 50 percent of the United States
14 Federal prison population in 2022 is incarcerated
15 for a drug trafficking offense.

16 (b) FINDINGS RELATED TO THE NEED FOR A SEC-
17 OND LOOK.—Congress finds the following:

18 (1) A second look at the sentences for incarcer-
19 ated individuals is needed.

20 (2) Life sentences of imprisonment and long
21 sentences without the possibility of review violate
22 human rights standards.

23 (3) One out of 7 incarcerated individuals is cur-
24 rently serving a life sentence or a virtual life sen-
25 tence of 50 years or longer. More than 25 percent

1 of those individuals are sentenced to life without pa-
2 role. One out of every 15 women in prison, or nearly
3 7,000 women, is serving a life sentence or virtual life
4 sentence.

5 (4) In 2020, 147,920 people were serving a life
6 sentence or virtual life sentence in the United
7 States, and 55,945 people were serving a sentence of
8 life without parole, compared to a total of 63 people
9 serving a life sentence without the possibility of re-
10 lease in the United Kingdom.

11 (5) Mandatory minimum penalties continue to
12 result in long sentences in the Federal prison sys-
13 tem, and—

14 (A) as of 2016—

15 (i) 55.7 percent of the Federal prison
16 population had been sentenced under a
17 mandatory minimum provision; and

18 (ii) 25 percent of Federal prisoners
19 serving life or virtual life sentences have
20 been convicted of nonviolent crimes, includ-
21 ing 30 percent for a drug crime; and

22 (B) in 2021, the average sentence length
23 for individuals who were convicted of an offense
24 carrying a mandatory minimum penalty was
25 139 months of imprisonment.

1 (6) Among those individuals serving life without
2 parole sentences, 40 percent have been convicted of
3 a drug related crime.

4 (7) The United States has much more punitive
5 sentencing laws than the rest of the world, as—

6 (A) sentence lengths in most European
7 countries rarely exceed 20 years;

8 (B) Norway abolished life sentences in
9 1981, and under Norwegian law, the maximum
10 prison term is 21 years;

11 (C) in Denmark and Sweden, individuals
12 serving life sentences can be released after 12
13 years and 18 years of imprisonment, respec-
14 tively; and

15 (D) in Latin America, only 6 out of 19
16 countries maintain statutes that allow life im-
17 prisonment.

18 (8) With the abolition of parole under the Sen-
19 tencing Reform Act of 1984 (Public Law 98–473;
20 98 Stat. 1987), there are extremely limited options
21 for review of Federal sentences, which differs greatly
22 from the rest of the world, as—

23 (A) Belgium requires a parole review of life
24 sentences after 10 years;

1 (B) Germany requires a parole review of
2 life sentences after 15 years; and

3 (C) the International Criminal Court re-
4 quires a parole review of life sentences after 25
5 years.

6 (9) An incarcerated individual should not be
7 precluded from receiving a second look review of
8 their sentence because of the nature of the crime for
9 which the individual was convicted, as—

10 (A) individuals tend to age out of criminal
11 activity starting around 25 years of age;

12 (B) released individuals over the age of 50
13 have a very low recidivism rate;

14 (C) several studies, State policies and pro-
15 grams, and the National Institute of Correc-
16 tions of the Bureau of Prisons consider incar-
17 cerated individuals aged 50 and above to be el-
18 derly;

19 (D) incarcerated people age at an acceler-
20 ated rate because they are more likely than the
21 general public to experience stresses including
22 long histories of alcohol and drug misuse, insuf-
23 ficient diet, lack of medical care, financial
24 struggles, and stress of maintaining safety
25 while behind bars;

1 (E) the Office of the Inspector General of
2 the Department of Justice has found that
3 “aging inmates commit less misconduct while
4 incarcerated and have a lower rate of re-arrest
5 once released” and has recommended the early
6 release of aging inmates to help manage the in-
7 mate population and reduce costs at the Bureau
8 of Prisons;

9 (F) the cost to State taxpayers to incar-
10 cerate the approximately 250,000 individuals
11 aged 50 or older behind bars as of the date of
12 enactment of this Act is approximately
13 \$16,000,000,000 each year;

14 (G) incarceration of individuals beyond the
15 age during which the individuals are likely to
16 commit crime is a drain on taxpayer dollars
17 that does nothing to increase public safety;

18 (H) individuals are capable of redemption;
19 and

20 (I) in the words of Bryan Stevenson, “each
21 of us is more than the worst thing we’ve ever
22 done”.

1 **SEC. 3. MODIFICATION OF CERTAIN TERMS OF IMPRISON-**
 2 **MENT.**

3 (a) IN GENERAL.—Subchapter C of chapter 229 of
 4 title 18, United States Code, is amended by inserting after
 5 section 3626 the following:

6 **“SEC. 3627. MODIFICATION OF CERTAIN TERMS OF IMPRIS-**
 7 **ONMENT.**

8 “(a) IN GENERAL.—Notwithstanding any other pro-
 9 vision of law, a court may reduce a term of imprisonment
 10 imposed upon a defendant if—

11 “(1) the imposed term of imprisonment was
 12 more than 10 years;

13 “(2) the defendant has served not less than 10
 14 years in custody for the offense; and

15 “(3) the court finds, after considering the fac-
 16 tors set forth in subsection (c), that—

17 “(A) the defendant—

18 “(i) is not a danger to the safety of
 19 any person or the community; and

20 “(ii) demonstrates readiness for re-
 21 entry; and

22 “(B) the interests of justice warrant a sen-
 23 tence modification.

24 “(b) SUPERVISED RELEASE.—

1 “(1) IN GENERAL.—Any defendant whose sen-
 2 tence is reduced pursuant to subsection (a), shall be
 3 ordered to serve—

4 “(A) the term of supervised release in-
 5 cluded as part of the original sentence imposed
 6 on the defendant; or

7 “(B) in the case of a defendant whose
 8 original sentence did not include a term of su-
 9 pervised release, a term of supervised release
 10 not to exceed the authorized terms of super-
 11 vised release described in section 3583.

12 “(2) CONDITIONS OF SUPERVISED RELEASE.—
 13 The conditions of supervised release and any modi-
 14 fication or revocation of the term of supervised re-
 15 lease shall be in accordance with section 3583.

16 “(c) FACTORS AND INFORMATION TO BE CONSID-
 17 ERED IN DETERMINING WHETHER TO MODIFY A TERM
 18 OF IMPRISONMENT.—

19 “(1) IN GENERAL.—The court, in determining
 20 whether to reduce a term of imprisonment pursuant
 21 to subsection (a)—

22 “(A) may consider the factors described in
 23 section 3553(a), including the nature of the of-
 24 fense and the history and characteristics of the
 25 defendant; and

1 “(B) shall consider—

2 “(i) the age of the defendant at the
3 time of the offense;

4 “(ii) the age of the defendant at the
5 time of the sentence modification petition
6 and relevant data regarding the decline in
7 criminality as the age of a defendant in-
8 creases;

9 “(iii) any presentation of argument
10 and evidence by counsel for the defendant;

11 “(iv) a report and recommendation of
12 the Bureau of Prisons, including informa-
13 tion on whether the defendant has substan-
14 tially complied with the rules of each insti-
15 tution in which the defendant has been
16 confined and whether the defendant has
17 completed any educational, vocational, or
18 other prison program, where available;

19 “(v) any report and recommendation
20 of the United States attorney for any dis-
21 trict in which an offense for which the de-
22 fendant is imprisoned was prosecuted;

23 “(vi) whether the defendant has dem-
24 onstrated maturity, rehabilitation, and a

1 fitness to reenter society sufficient to jus-
2 tify a sentence reduction;

3 “(vii) any statement, which may be
4 presented orally or otherwise, by any vic-
5 tim of an offense for which the defendant
6 is imprisoned or by a family member of the
7 victim if the victim is deceased;

8 “(viii) any report from a physical,
9 mental, or psychiatric examination of the
10 defendant conducted by a licensed health
11 care professional;

12 “(ix) the family and community cir-
13 cumstances of the defendant, including any
14 history of abuse, trauma, or involvement in
15 the child welfare system, and the potential
16 benefits to children and family members of
17 reunification with the defendant;

18 “(x) the role of the defendant in the
19 offense and whether, and to what extent,
20 an adult was involved in the offense if the
21 defendant was a juvenile at the time of the
22 offense;

23 “(xi) the diminished culpability of ju-
24 veniles as compared to that of adults, and
25 the hallmark features of youth, including

1 immaturity, impetuosity, and failure to ap-
2 preciate risks and consequences, if the de-
3 fendant was a juvenile at the time of the
4 offense; and

5 “(xii) any other information the court
6 determines relevant to the decision of the
7 court.

8 “(2) REBUTTABLE PRESUMPTION.—In the case
9 of a defendant who is 50 years of age or older on
10 the date on which the defendant files an application
11 for a sentence reduction under subsection (a), there
12 shall be a rebuttable presumption that the defendant
13 shall be released.

14 “(d) LIMITATION ON APPLICATIONS PURSUANT TO
15 THIS SECTION.—

16 “(1) SECOND APPLICATION.—Not earlier than
17 5 years after the date on which an order denying re-
18 lease on an initial application under this section be-
19 comes final, a court shall entertain a second applica-
20 tion by the same defendant under this section.

21 “(2) THIRD APPLICATION.—Not earlier than 2
22 years after the date on which an order entered by
23 a court on a second application under paragraph (1)
24 becomes final, a court shall entertain a third appli-
25 cation by the same defendant under this section.

1 “(3) FINAL APPLICATION.—A court shall enter-
2 tain a final application if the defendant—

3 “(A) is 50 years of age or older; and

4 “(B) has exhausted the sentencing modi-
5 fication process.

6 “(e) PROCEDURES.—

7 “(1) NOTICE.—Not later than 30 days after the
8 date on which the 10th year of imprisonment begins
9 for a defendant sentenced to more than 10 years of
10 imprisonment for an offense, the Bureau of Prisons
11 shall provide written notice of this section to—

12 “(A) the defendant; and

13 “(B) the sentencing court, the United
14 States attorney, and the Federal Public De-
15 fender or Executive Director of the Community
16 Defender Organization for the judicial district
17 in which the sentence described in this para-
18 graph was imposed.

19 “(2) APPLICATION.—

20 “(A) IN GENERAL.—An application for a
21 sentence reduction under this section shall be
22 filed in the judicial district in which the sen-
23 tence was imposed as a motion to reduce the
24 sentence of the defendant pursuant to this sec-

tion and may include affidavits or other written material.

“(B) REQUIREMENT.—A motion to reduce a sentence under this section shall be filed with the sentencing court and a copy shall be served on the United States attorney for the judicial district in which the sentence was imposed.

“(3) EXPANDING THE RECORD; HEARING.—

“(A) EXPANDING THE RECORD.—After the filing of a motion to reduce a sentence under this section, the court may direct the parties to expand the record by submitting additional written materials relating to the motion.

“(B) HEARING.—

“(i) IN GENERAL.—The court shall, upon request of the defendant or the Government, conduct a hearing on the motion, at which the defendant and counsel for the defendant shall be given the opportunity to be heard.

“(ii) EVIDENCE.—In a hearing under this section, the court shall allow parties to present evidence.

“(iii) DEFENDANT’S PRESENCE.—At a hearing under this section, the defendant

1 shall be present unless the defendant
2 waives the right to be present. The re-
3 quirement under this clause may be satis-
4 fied by the defendant appearing by video
5 teleconference.

6 “(iv) COUNSEL.—A defendant who is
7 unable to afford counsel is entitled to have
8 counsel appointed, at no cost to the de-
9 fendant, to represent the defendant for the
10 application and proceedings under this sec-
11 tion, including any appeal, unless the de-
12 fendant expressly waives the right to coun-
13 sel after being fully advised of their rights
14 by the court.

15 “(v) FINDINGS.—The court shall state
16 in open court, and file in writing, the rea-
17 sons for granting or denying a motion
18 under this section.

19 “(C) APPEAL.—The Government or the
20 defendant may file a notice of appeal in the dis-
21 trict court for review of a final order under this
22 section. The time limit for filing such appeal
23 shall be governed by rule 4(a) of the Federal
24 Rules of Appellate Procedure.

1 “(4) CRIME VICTIMS RIGHTS.—Upon receiving
2 an application under paragraph (2), the United
3 States attorney shall provide any notifications re-
4 quired under section 3771.

5 “(f) ANNUAL REPORT.—

6 “(1) IN GENERAL.—Not later than 1 year after
7 the date of enactment of the Second Look Act of
8 2022, and once every year thereafter, the United
9 States Sentencing Commission shall submit to the
10 Committee on the Judiciary of the Senate and the
11 Committee on the Judiciary of the House of Rep-
12 resentatives a report on requests for sentence reduc-
13 tions under this section.

14 “(2) CONTENTS.—Each report required to be
15 published under paragraph (1) shall include, for the
16 1-year period preceding the report—

17 “(A) the number of—

18 “(i) incarcerated individuals who were
19 granted a sentence reduction under this
20 section; and

21 “(ii) incarcerated individuals who
22 were denied a sentence reduction under
23 this section;

24 “(B) the number of incarcerated individ-
25 uals released from prison under this section;

1 “(C) the demographic characteristics, in-
2 cluding race and gender, of—

3 “(i) the incarcerated individuals who
4 applied for a sentenced reduction under
5 this section;

6 “(ii) the incarcerated individuals who
7 were granted a sentence reduction under
8 this section; and

9 “(iii) the incarcerated individuals who
10 were released under this section;

11 “(D) the location, categorized by Federal
12 circuit and State, of—

13 “(i) the incarcerated individuals who
14 applied for a reduction under this section;

15 “(ii) the incarcerated individuals who
16 were granted a reduction under this sec-
17 tion; and

18 “(iii) the incarcerated individuals who
19 were released under this section;

20 “(E) the average sentence reduction grant-
21 ed under this section;

22 “(F) the number of incarcerated individ-
23 uals 50 years of age or older who applied for
24 a sentence reduction under this section;

1 “(G) the number of incarcerated individ-
 2 uals who are 50 years of age or older who were
 3 granted a sentence reduction under this section;
 4 and

5 “(H) the number of incarcerated individ-
 6 uals 50 years of age or older who were released
 7 from prison under this section.

8 “(3) ATTORNEY GENERAL COOPERATION.—The
 9 Attorney General shall—

10 “(A) assist and provide information to the
 11 United States Sentencing Commission in the
 12 performance of the duties of the Commission
 13 under this subsection; and

14 “(B) promptly respond to requests from
 15 the Commission.”.

16 (b) TABLE OF SECTIONS.—The table of sections for
 17 subchapter C of chapter 229 of title 18, United States
 18 Code, is amended by inserting after the item relating to
 19 section 3626 the following:

 “3627. Modification of certain terms of imprisonment.”.

20 (c) TECHNICAL AND CONFORMING AMENDMENT.—
 21 Section 3582(c) of title 18, United States Code, is amend-
 22 ed—

23 (1) in paragraph (1)(B), by striking “and” at
 24 the end;

1 (2) in paragraph (2), by striking the period at
2 the end and inserting “; and”; and

3 (3) by adding at the end the following:

4 “(3) the court may reduce a term of imprison-
5 ment in accordance with section 3627.”.

6 (d) APPLICABILITY.—The amendments made by this
7 section shall apply to any conviction entered before, on,
8 or after the date of enactment of this Act.

○