

118TH CONGRESS
1ST SESSION

S. _____

To focus limited Federal resources on the most serious offenders.

IN THE SENATE OF THE UNITED STATES

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

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 2023”.

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)—

2 (A) by redesignating paragraph (58) as
3 paragraph (59);

4 (B) by redesignating the second paragraph
5 (57) (relating to “serious drug felony”) as
6 paragraph (58); and

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

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

11 (2) in section 401(b)(1) (21 U.S.C.
12 841(b)(1))—

13 (A) in subparagraph (A), in the flush text
14 following clause (viii)—

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

17 (ii) by striking “15 years” and insert-
18 ing “10 years”; and

19 (B) in subparagraph (B), in the flush text
20 following clause (viii)—

21 (i) by striking “5 years” and inserting
22 “2 years”; and

23 (ii) by striking “not be less than 10
24 years” and inserting “not be less than 5
25 years”.

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

4 (1) in paragraph (1), in the flush text following
5 subparagraph (H)—

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

8 (B) by striking “person commits” and in-
9 serting “person, other than a courier, com-
10 mits”; and

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

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

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

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

4 (C) by inserting “If a person who is a cou-
5 rier commits such a violation, the person shall
6 be sentenced to a term of imprisonment of not
7 less than 2 years and not more than life. If a
8 person who is a courier commits such a viola-
9 tion after a prior conviction for a serious drug
10 felony or serious violent felony has become
11 final, the person shall be sentenced to a term
12 of imprisonment of not less than 5 years and
13 not more than life.” before “Notwithstanding
14 section 3583”.

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

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

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

24 (3) PAST CASES.—In the case of a defendant
25 who, before the date of enactment of this Act, was

1 convicted or sentenced for a covered offense, the sen-
2 tencing court may, on motion of the defendant, the
3 Bureau of Prisons, the attorney for the Government,
4 or on its own motion, impose a reduced sentence
5 after considering the factors set forth in section
6 3553(a) of title 18, United States Code.

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

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

19 (b) CONSIDERATIONS.—In carrying out this section,
20 the United States Sentencing Commission shall con-
21 sider—

22 (1) the mandate of the United States Sen-
23 tencing Commission, under section 994(g) of title
24 28, United States Code, to formulate the sentencing
25 guidelines in such a way as to “minimize the likeli-

1 hood that the Federal prison population will exceed
2 the capacity of the Federal prisons”;

3 (2) the findings and conclusions of the United
4 States Sentencing Commission in its October 2011
5 report to Congress entitled, Mandatory Minimum
6 Penalties in the Federal Criminal Justice System;

7 (3) the fiscal implications of any amendments
8 or revisions to the sentencing guidelines or policy
9 statements made by the United States Sentencing
10 Commission;

11 (4) the relevant public safety concerns involved
12 in the considerations before the United States Sen-
13 tencing Commission;

14 (5) the intent of Congress that penalties for
15 violent, repeat, and serious drug traffickers who
16 present public safety risks remain appropriately se-
17 vere; and

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

20 (c) EMERGENCY AUTHORITY.—The United States
21 Sentencing Commission shall—

22 (1) promulgate the guidelines, policy state-
23 ments, or amendments provided for in this Act as
24 soon as practicable, and in any event not later than
25 120 days after the date of enactment of this Act, in

1 accordance with the procedure set forth in section
2 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994
3 note), as though the authority under that Act had
4 not expired; and

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

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

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

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

24 (a) DEFINITIONS.—In this section—

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

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

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

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

15 (2) for each criminal statutory offense listed
16 under paragraph (1)—

17 (A) the potential criminal penalty for the
18 criminal statutory offense;

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

24 (C) the mens rea requirement for the
25 criminal statutory offense.

1 (c) REPORT ON CRIMINAL REGULATORY OF-
2 FENSES.—

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

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

11 (B) for each criminal regulatory offense
12 listed under subparagraph (A)—

13 (i) the potential criminal penalty for a
14 violation of the criminal regulatory offense;

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

21 (iii) the mens rea requirement for the
22 criminal regulatory offense.

23 (2) AGENCIES DESCRIBED.—The Federal agen-
24 cies described in this paragraph are the Department
25 of Agriculture, the Department of Commerce, the

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

1 Federal Housing Finance Agency, and the Office of
2 Government Ethics.

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

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

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

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