

The Smarter Sentencing Act, S.502
Senators Lee (R-UT), Durbin (D-IL),
Cruz (R-TX), Leahy (D-VT), Flake (R-AZ),
Booker (D-NJ), Paul (R-KY), Whitehouse (D-RI) and Coons (D-DE)

Section by Section Summary

Section 1. Short Title.

This section provides that the legislation may be cited as the “Smarter Sentencing Act of 2015.”

Section.2 Applicability of Statutory Minimums.

Congress adopted the “safety valve” at 18 U.S.C. § 3553(f) to authorize sentences in federal drug prosecutions without regard to a mandatory minimum sentence for certain non-violent drug offenses if, among other requirements, the defendant has such minimal criminal history as to be categorized as “Criminal History Category I” under federal sentencing guidelines. This bill incrementally expands the “safety valve” to defendants classified in Criminal History Category II. This change does not reduce the statutory maximum sentences that may be imposed on safety-valve eligible defendants.

Section 3. Clarification of Applicability of the Fair Sentencing Act.

The Fair Sentencing Act of 2010 reduced the sentencing disparity between crack and powder cocaine offenses from 100:1 to 18:1 and eliminated the mandatory minimum for simple possession of crack. This section allows certain inmates who were sentenced under the pre-Fair Sentencing Act regime to petition to have their sentences reduced consistent with the Fair Sentencing Act and current law. Under this section, individuals may petition courts and prosecutors to review their case. Depending on relevant factors, including public safety and the nature of the offense, a judge may grant or deny the petition. This section may not be construed to require a sentence reduction.

Section 4. Sentencing Modifications for Certain Drug Offenses.

This section reduces the mandatory minimum penalties for certain non-violent drug offenses in Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. § 841(b)(1)) and Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. § 960(b)) from 5, 10, and 20 years to 2, 5, and 10 years, respectively, and for certain offenders, from a mandatory life sentence to a mandatory minimum sentence of 25 years. This section reduces but does not eliminate mandatory minimums, and the statutory maximum sentences remain from 40 years up to life in prison. This section does not change other enhancements applicable to serious or violent offenders. The reduced mandatory minimum penalties for importation apply only to “couriers”—defendants whose role in the offense was limited to transporting or storing drugs or money.

Section 5. Directive to the Sentencing Commission.

This section directs the United States Sentencing Commission to review and amend, if appropriate, its guidelines and policy statements to conform with the Smarter Sentencing Act. The Commission must consider, among other things, fiscal implications, public safety concerns, the need to hold serious, repeat and violent drug traffickers accountable, the need to reduce racial disparities in sentencing, and the Commission’s mandate under 28 U.S.C. § 994(g) to formulate the guidelines so as to “minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons.” This section also gives the Commission emergency authority to make the necessary changes within 120 days of enactment.

Section 6. Report by Attorney General.

This section directs the Attorney General to submit a report regarding the manner in which reduced expenditures on federal corrections and cost savings resulting from the Smarter Sentencing Act will be used to help reduce prison overcrowding and increase investment in law enforcement, crime prevention, and recidivism reduction programs. The report must be submitted within six months of enactment.

Section 7. Report on Federal Criminal Offenses.

This section requires the Attorney General and the heads of specified federal agencies to submit a report to Senate and House Judiciary Committees within one year of enactment of the Smarter Sentencing Act that details all federal statutory criminal offenses and all criminal offenses established by federal regulation issued by those federal agencies. The reports must provide information on the elements of each statutory offense, the potential penalty and *mens rea* for each offense, and the number of prosecutions within the prior fifteen years. This section also requires the Attorney General and relevant agency heads to establish a publicly-accessible index of these offenses within two years of the date of enactment of this Act.