



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

S. 1410- Smarter Sentencing Act of 2014
Senator Richard Durbin (D-Illinois)

Sec. 1. - To focus limited federal resources on the most serious offenders. This bill will only apply to federal sentencing.

Sec. 2. Applicability of Statutory Minimums - Amends section 3553(f)(1) of title 18, United States Code to provide that statutory minimums do not need to be followed if the defendant:

- Does not have more than 1 criminal history point as determined under the sentencing guidelines
- Does not have more than 2 criminal history points;
- Has no prior convictions for any offense that involves the use, attempted use, or threatened use of physical force;
- Has not been convicted of a firearm offense, sex offense, federal crime of terrorism, racketeering offense, or conspiring to use and invest illicit drug profits.

Sec. 3. Clarification of Applicability of Fair Sentencing Act - For defendants previously sentenced, the court that imposed the sentence for a covered offense (defined as a violation of federal criminal statute, the statutory penalties for which modified by sections 2 or 3 of Fair Sentencing Act of 2010, committed before August 3, 2010) may, on motion of the defendant, Director of the Bureau of Prisons, attorney for the government or court, impose a reduced sentence as if sections 2 and 3 of Fair Sentencing Act in effect at time offense committed.

No court shall reduce sentence if previously imposed or reduced according to sections 2 and 3, or if a motion made under this section was previously denied. The court is not required to reduce any sentence.

Sec. 4. Sentencing Modifications for Certain Drug Offenses – Amends Section 401(b)(1) of Controlled Substances Act to provide that:

- Minimum term of imprisonment for listed drug offenses decreased from 10 years or more to 5 years or more;
- If death or serious bodily injury results from offense, prison sentence now may not be less than 10 years, rather than 20 years;
- Minimum term of imprisonment for listed drug offenses decreased from 5 years to 2 years;
- If violation takes place after prior conviction for felony drug offense final, minimum term of imprisonment now 5 years rather than 10 years.

Amends Section 1010(b) of Controlled Substances Import and Export Act to provide that:

- Listed drug violations now have a mandatory minimum sentence of 5 years rather than 10 years;

- If death or serious bodily injury results from offense, prison sentence now may not be less than 10 years, rather than 20 years;
- If no prior conviction for a felony drug offense, supervised release of at least 2 years rather than 5 years;
- If prior conviction, minimum for supervised release changed from 10 years to 5 years.

Sec. 5. Directive to the Sentencing Commission - The United States Sentencing Commission shall review and amend guidelines and policy statements applicable to persons convicted of an offense under Section 401 of the Controlled Substances Act or Section 1010 of the Controlled Substances Import and Export Act to ensure consistent with the amendments made by sections 2 and 4 of this Act.

The U.S. Sentencing Commission shall consider its mandate to formulate sentencing guidelines in such a way as to “minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons.” The Sentencing Commission should also consider:

- The findings and conclusions in *Mandatory Minimum Penalties in the Federal Criminal Justice System*;
- Fiscal implications of any amendments or revisions;
- Relevant public safety concerns;
- Intent of Congress that severe sentences for violent, repeat, serious drug traffickers who present public safety risks remain in place;
- The need to reduce and prevent racial disparities in federal sentencing.

Using its emergency authority, the USSC shall promulgate the guidelines, policy statements, or amendments provided for in this act as soon as practicable, and in any event not later than 120 days after enactment.

Sec. 6. Report by Attorney General - Not later than 6 months after enactment, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Senate a report outlining how reduced expenditures on federal corrections and cost savings resulting from this Act will be used to help reduce overcrowding in the Federal Bureau of Prisons, help increase proper investment in law enforcement and crime prevention, and help decrease criminal recidivism.

Sec. 7. Report on Federal Criminal Offenses - Not later than 1 year after enactment, Attorney General shall submit a report including:

- A list of all criminal statutory offenses (criminal offense under federal statute);
- A list of elements for each;
- The potential criminal penalty;
- Number of prosecutions brought by the Department of Justice each year for the 15 year period preceding enactment;
- Mens rea requirement.

Not later than 1 year after enactment, the head of each Federal agency listed shall submit a report including:

- A list of all criminal regulatory offenses (federal regulation enforceable by criminal penalty) enforceable by agency;
- The potential criminal penalty for violation;

- Number of violations referred to the Department of Justice for prosecution in each of the years during the 15 year period preceding enactment;
- Mens rea requirement.

Not later than 2 years after enactment, the Attorney General shall establish a publicly accessible index of each criminal statutory offense listed in report and make index available and freely accessible on website of DOJ.

The head of each agency listed shall establish a publicly accessible index of each criminal regulatory offense and make index available and freely accessible on the site of the agency.

Nothing in this section should be construed to require or authorize appropriations.

Sec. 8. Sexual Assault Offenses - Amends chapter 109 A of title 18 of United States Code to provide for:

- A minimum of not less than 5 years of imprisonment for an offense of aggravated sexual assault or sexual assault;
- A minimum of 5 years (where maximum is not more than 15 years) for sexual assault of a minor or ward;
- A minimum of 5 years for those offenses under this statute punishable by death;
- If in the course of such an offense an individual murders another, they shall be punished by death or imprisoned for any term of years or for life.

Sec. 9. Domestic Violence Offenses - Amends Section 2261(b) of title 18 of United States Code to provide that:

- If death of victim results, minimum sentence is 10 years;
- If death results under violation of section 2261A, can impose any term of imprisonment;
- If permanent disfigurement or life threatening bodily injury results in violation of this section, maximum sentence 25 years, or if in violation of section 2261A, maximum sentence 20 years;
- If serious bodily injury to victim results or if offender uses dangerous weapon in violation of this section, maximum sentence 15 years, or if in violation of section 2261A, maximum sentence 10 years.

Sec. 10. Mandatory Minimum Sentences for Certain Offenses Relating to Provision of Arms to Terrorists or Proliferators of Weapons of Mass Destruction - Amends Section 206 of International Emergency Economic Powers Act to provide that a natural person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of an unlawful act described in paragraph (2) shall be imprisoned for a term of not less than 5 years.

An unlawful act involves the exportation of goods or services to any person in connection with a program of a foreign country or a foreign person to develop weapons of mass destruction, or the provision of defense articles or defense services to:

- A state sponsor of terrorism;
- An organization designated as a foreign terrorist organization;

- A person on list of specially designated nationals and blocked persons maintained by Office of Foreign Assets Control of Department of Treasury for activity relating to support for international terrorism or proliferation of weapons of mass destruction.

Trading with the Enemy Act amended by adding a minimum term of imprisonment of 5 years for certain acts relating to the provision of arms to terrorists or proliferators of weapons of mass destruction.

Arms Export Control Act amended to include that upon conviction an individual shall be fined for each violation not more than \$1 million or imprisoned not more than 20 years, or both, and be imprisoned not less than 5 years if violation involves export of defense articles or defense services to above mentioned individuals or groups.

Smuggling from United States amended by allowing a maximum imprisonment term of not more than 10 years in addition to the option for a fine; individual shall be imprisoned not less than 5 years if merchandise, article, or object is a dense article and was exported or sent, or attempted to be exported or sent, to above mentioned individuals or groups.

Prepared by NCSL staff. For more information, please contact Susan Parnas Frederick, susan.frederick@ncsl.org or Jennifer Arguinzoni, jennifer.arguinzoni@ncsl.org or by phone at 202-624-5400 in NCSL's Washington, DC office.