

113TH CONGRESS  
1ST SESSION

# S. 1410

To focus limited Federal resources on the most serious offenders.

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IN THE SENATE OF THE UNITED STATES

JULY 31, 2013

Mr. DURBIN (for himself, Mr. LEE, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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 2013”.

6 **SEC. 2. APPLICABILITY OF STATUTORY MINIMUMS.**

7 Section 3553(f)(1) of title 18, United States Code,  
8 is amended by striking “defendant” and all that follows  
9 through “point” and inserting “criminal history category  
10 for the defendant is not higher than category 2”.

1 **SEC. 3. CLARIFICATION OF APPLICABILITY OF THE FAIR**  
2 **SENTENCING ACT.**

3 (a) **DEFINITION OF COVERED OFFENSE.**—In this  
4 section, the term “covered offense” means a violation of  
5 a Federal criminal statute, the statutory penalties for  
6 which were modified by section 2 or 3 of the Fair Sen-  
7 tencing Act of 2010 (Public Law 111–220; 124 Stat.  
8 2372), that was committed before August 3, 2010.

9 (b) **DEFENDANTS PREVIOUSLY SENTENCED.**—A  
10 court that imposed a sentence for a covered offense, may,  
11 on motion of the defendant, the Director of the Bureau  
12 of Prisons, the attorney for the Government, or the court,  
13 impose a reduced sentence as if sections 2 and 3 of the  
14 Fair Sentencing Act of 2010 (Public Law 111–220; 124  
15 Stat. 2372) were in effect at the time the covered offense  
16 was committed.

17 (c) **LIMITATIONS.**—No court shall entertain a motion  
18 made under this section to reduce a sentence if the sen-  
19 tence was previously imposed or previously reduced in ac-  
20 cordance with the amendments made by sections 2 and  
21 3 of the Fair Sentencing Act of 2010 (Public Law 111–  
22 220; 124 Stat. 2372) or if a motion made under this sec-  
23 tion to reduce the sentence was previously denied. Nothing  
24 in this section shall be construed to require a court to re-  
25 duce any sentence pursuant to this section.

1 **SEC. 4. SENTENCING MODIFICATIONS FOR CERTAIN DRUG**  
2 **OFFENSES.**

3 (a) CONTROLLED SUBSTANCES ACT.—Section  
4 401(b)(1) of the Controlled Substances Act (21 U.S.C.  
5 841(b)(1)) is amended—

6 (1) in subparagraph (A), in the flush text fol-  
7 lowing clause (viii)—

8 (A) by striking “10 years or more” and in-  
9 serting “5 years or more”; and

10 (B) by striking “such person shall be sen-  
11 tenced to a term of imprisonment which may  
12 not be less than 20 years and” and inserting  
13 “such person shall be sentenced to a term of  
14 imprisonment which may not be less than 10  
15 years and”; and

16 (2) in subparagraph (B), in the flush text fol-  
17 lowing clause (viii)—

18 (A) by striking “5 years” and inserting “2  
19 years”; and

20 (B) by striking “not be less than 10 years”  
21 and inserting “not be less than 5 years”.

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

25 (1) in paragraph (1), in the flush text following  
26 subparagraph (H)—

1 (A) by striking “not less than 10 years”  
2 and inserting “not less than 5 years”; and

3 (B) by striking “such person shall be sen-  
4 tenced to a term of imprisonment of not less  
5 than 20 years” and inserting “such person shall  
6 be sentenced to a term of imprisonment of not  
7 less than 10 years”; and

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

10 (A) by striking “5 years” and inserting “2  
11 years”; and

12 (B) by striking “10 years” and inserting  
13 “5 years”.

14 **SEC. 5. DIRECTIVE TO THE SENTENCING COMMISSION.**

15 (a) DIRECTIVE TO SENTENCING COMMISSION.—Pur-  
16 suant to its authority under section 994(p) of title 28,  
17 United States Code, and in accordance with this section,  
18 the United States Sentencing Commission shall review and  
19 amend, if appropriate, its guidelines and its policy state-  
20 ments applicable to persons convicted of an offense under  
21 section 401 of the Controlled Substances Act (21 U.S.C.  
22 841) or section 1010 of the Controlled Substances Import  
23 and Export Act (21 U.S.C. 960) to ensure that the guide-  
24 lines and policy statements are consistent with the amend-  
25 ments made by sections 2 and 4 of this Act and reflect

1 the intent of Congress that such penalties be decreased  
2 in accordance with the amendments made by section 4 of  
3 this Act.

4 (b) CONSIDERATIONS.—In carrying out this section,  
5 the United States Sentencing Commission shall con-  
6 sider—

7 (1) the mandate of the United States Sen-  
8 tencing Commission, under section 994(g) of title  
9 28, United States Code, to formulate the sentencing  
10 guidelines in such a way as to “minimize the likeli-  
11 hood that the Federal prison population will exceed  
12 the capacity of the Federal prisons”;

13 (2) the findings and conclusions of the United  
14 States Sentencing Commission in its October 2011  
15 report to Congress entitled, Mandatory Minimum  
16 Penalties in the Federal Criminal Justice System;

17 (3) the fiscal implications of any amendments  
18 or revisions to the sentencing guidelines or policy  
19 statements made by the United States Sentencing  
20 Commission;

21 (4) the relevant public safety concerns involved  
22 in the considerations before the United States Sen-  
23 tencing Commission;

1           (5) the intent of Congress that penalties for  
2           violent and serious drug traffickers who present pub-  
3           lic safety risks remain appropriately severe; and

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

6           (c) **EMERGENCY AUTHORITY.**—The United States  
7           Sentencing Commission shall—

8           (1) promulgate the guidelines, policy state-  
9           ments, or amendments provided for in this Act as  
10          soon as practicable, and in any event not later than  
11          120 days after the date of enactment of this Act, in  
12          accordance with the procedure set forth in section  
13          21(a) of the Sentencing Act of 1987 (28 U.S.C. 994  
14          note), as though the authority under that Act had  
15          not expired; and

16          (2) pursuant to the emergency authority pro-  
17          vided under paragraph (1), make such conforming  
18          amendments to the Federal sentencing guidelines as  
19          the Commission determines necessary to achieve  
20          consistency with other guideline provisions and ap-  
21          plicable law.

22           **SEC. 6. REPORT BY ATTORNEY GENERAL.**

23           Not later than 6 months after the date of enactment  
24           of this Act, the Attorney General shall submit to the Com-  
25           mittees on the Judiciary of the House of Representatives

1 and the Senate a report outlining how the reduced expend-  
2 itures on Federal corrections and the cost savings result-  
3 ing from this Act will be used to help reduce overcrowding  
4 in the Federal Bureau of Prisons, help increase proper in-  
5 vestment in law enforcement and crime prevention, and  
6 help reduce criminal recidivism, thereby increasing the ef-  
7 fectiveness of Federal criminal justice spending.

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