

## **The Sentencing Reform and Corrections Act of 2015 (S. 2123)**

**Introduced:** October 1, 2015, by Senate Judiciary Committee Chairman Chuck Grassley (R-IA) and Senators Richard Durbin (D-IL), Mike Lee (R-UT), John Cornyn (R-TX), Sheldon Whitehouse (D-RI), Lindsey Graham (R-SC), Chuck Schumer (D-NY), Patrick Leahy (D-VT), and Cory Booker (D-NJ).

**Status:** Approved by Senate Judiciary Committee, October 22, 2015.

**House companion bill:** H.R. 3713, the Sentencing Reform Act, contains virtually identical sentencing reforms, with retroactive relief for fewer people, but does not contain the prison reforms found in S. 2123. The Sentencing Reform Act was approved by the House Judiciary Committee on November 18, 2015.

**If it becomes law, S. 2123 would make the following reforms to federal sentencing laws:**

### **Mandatory minimum sentence reductions:**

- Reduce the mandatory life without parole sentence for a third drug offense under 21 U.S.C. § 841 to a mandatory minimum term of 25 years in prison (retroactive);
- Reduce the mandatory minimum 20-year sentence for a second drug offense under 21 U.S.C. § 841 to a mandatory minimum term of 15 years in prison (retroactive);
- Reduce the 15-year mandatory minimum sentence for prohibited people who possess guns under 18 U.S.C. § 922(g) to a mandatory minimum term of 10 years (retroactive);
- Reduce the 25-year mandatory minimum sentence for those who commit second or subsequent offenses of possessing guns in the course of drug trafficking offenses or crimes of violence under 18 U.S.C. § 924(c) to a mandatory minimum term of 15 years, AND limits application of that 15-year mandatory minimum to convictions that were final prior to the commission of the new § 924(c) offense (retroactive).

### **Fair Sentencing Act reforms to crack cocaine sentences**

- The Fair Sentencing Act was passed unanimously by Congress in 2010 to reduce a racially discriminatory disparity between crack and powder cocaine mandatory minimum sentences.
- S. 2123 would make the Fair Sentencing Act retroactive, allowing approximately 5,800 crack cocaine offenders sentenced before August 3, 2010, to petition courts for sentences in line with the law's reforms. Sentence reductions may only be granted after a full review of each prisoner's case by the U.S. Attorney's office and the approval of a federal court.

### **Drug "safety valve" exception expansion**

- Expand the existing drug "safety valve" exception at 18 U.S.C. § 3559(f) so that nonviolent drug offenders can receive sentences below the mandatory minimum term (not retroactive) if:
  - They had 4 or fewer criminal history points, as calculated under the federal sentencing guidelines, and did not have a prior 2-point or 3-point felony conviction, OR the court

- determines that the person's criminal history score substantially over-represents the seriousness of the defendant's criminal record or the likelihood that he will commit more crimes; and
- They fulfill all other parts of the safety valve (no violence resulted; no use or possession of a gun; person pled guilty; and person was not a leader, organizer, manager, or supervisor of the offense conduct).
  - Create an additional safety valve exception (not retroactive) for drug offenders facing 10-year mandatory minimum sentences so that the person can receive the 5-year mandatory minimum prison term instead if:
    - They do not have a prior conviction for a "serious drug felony" or a "serious violent felony"; and
    - Did not play a leadership role in the offense; and
    - Did not exercise substantial authority or control over the criminal activity of a criminal organization, or act as an importer or exporter, high-level distributor or supplier, wholesaler, or manufacturer; and
    - Did not use or possess a gun; and
    - Plead guilty; and
    - No violence resulted; and
    - Did not sell drugs to or with a person under age 18.

#### **New mandatory minimum sentences**

- Applies 15- and 25-year mandatory minimum sentences for drug offenses to a new group of people who previously would not have received them: those who have a prior "serious violent felony" conviction. There are no requirements that such convictions be recent or adult offenses, and the term is broadly and vaguely defined and likely to lead to extensive confusion and litigation.
- Applies 15-year mandatory minimum sentences for gun possession in the course of a drug trafficking or violent crime to a new group of people who previously would not have received them: those who have a prior state crime of violence conviction that included gun possession, brandishing, or discharge as an element of the offense. There are no requirements that such state convictions be recent or adult offenses, and the term is broadly and vaguely defined and likely to lead to extensive confusion and litigation.
- Create new mandatory minimum sentences of 10 years for interstate domestic violence resulting in a death and 5 years for providing certain weapons or aid to terrorists.

#### **Prison reforms through earned time credits**

- Requires Bureau of Prisons to use a risk assessment tool to categorize prisoners as being at high, medium, or low risk of reoffending.
- Allow some categories of federal prisoners to earn time credits for completing rehabilitative programs and "cash in" those time credits at the end of their sentences for a transfer to a different type of supervision, such as a halfway house. Many prisoners are categorically excluded from earning or using their credits.