



THE SENTENCING REFORM AND CORRECTIONS ACT of 2017

TITLE 1: SENTENCING REFORM

Section 101. Reforms and Targets Enhanced Mandatory Minimum Sentences for Prior Drug Felons. The enhanced mandatory minimums for prior drug felons are reduced: the three-strike penalty is reduced from life imprisonment to 25 years, and the 20-year minimum is reduced to 15 years. The offenses that trigger these enhanced minimum sentences are also reformed. Currently, those offenses could be any prior drug felony. This bill would both limit them to serious drug felonies and expand them to include serious violent felonies. The managers' amendment excludes from the definition of "serious drug felony" non-violent drug felonies for which the sentence was completed more than 15 years prior to the commission of the current offense. This provision may be applied retroactively to reduce a defendant's sentence, but only after a court considers sentencing factors, including any danger and prison misconduct, as well as a review of prior criminal conduct and other relevant information from governmental authorities. Retroactive relief cannot be given to an offender who has ever been convicted of a serious violent felony.

Section 102. Broadens the Existing Safety Valve. The existing safety valve is expanded to include offenders with up to four criminal history points, excluding 1-point offenses, such as minor misdemeanors. However, offenders with prior "3 point" felony convictions or prior "2 point" violent offenses will not be eligible for the safety valve. Formerly, defendants under the bill would not have been eligible for the existing safety valve if they had been convicted of a 2 point drug trafficking offense as well. The safety valve will also adopt an existing mechanism under the Sentencing Guidelines to permit a court to waive those disqualifying prior convictions if the court specifies in writing that those prior convictions substantially over-represent the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes. This provision is subject to appellate review, like other sentencing determinations, and offenders with prior serious drug or violent convictions are ineligible for relief. Section 102 also provides for applicability of the safety valve in maritime drug cases to the same extent as others. Section 102 is not retroactive.

Section 103. Creates a Second Safety Valve that Preserves but Targets the 10-Year Mandatory Minimum to Certain Drug Offenders. A second safety valve is created that preserves but targets the existing 10-year mandatory minimum to offenders who did not serve as an importer, exporter, high-level distributor or supplier, wholesaler, or manufacturer, unless they were minor or minimal participants in the conspiracy. Prior language excluding defendants who played an enhanced role from eligibility for this second safety valve has been deleted. Consistent with the existing safety valve, the offender must not have used violence or a firearm or been a member of a continuing criminal enterprise, and the offense must not

have resulted in death or serious bodily injury. The defendant must also truthfully “proffer” with the government and provide any and all information and evidence the defendant has about the offense. The amended bill restricts use of information the defendant provides during the proffer from being used against him unless the information concerns a violent crime. This provision also excludes offenders with prior serious drug or serious violent convictions or offenders who distributed drugs to or with a person under the age of 18. This provision is not retroactive.

Section 104. Clarifies and Reduces the Enhanced Mandatory Minimum Sentence for Certain Firearm Offenses. In response to a Supreme Court decision, the bill clarifies that the enhanced mandatory minimum sentence for using a firearm during a crime of violence or drug crime is limited to offenders who have previously been convicted and served a sentence for such an offense. The amended bill no longer reduces that enhanced mandatory minimum from 25 years to 15 years. The amended bill no longer expands the applicable predicate offenses to include similar prior state-level convictions in which the offender carried, brandished, or used a firearm. This provision may be applied retroactively, but only after a court considers sentencing factors, including any danger, prison misconduct, prior misconduct, and information provided by government, and, as amended, may not be applied retroactively to any offender who has been convicted of any serious violent felony, or to any drug trafficker who brandished or used a gun in the commission of that offense.

Section 105. Retroactive Application of Fair Sentencing Act. The Fair Sentencing Act of 2010 reduced the disparity in sentencing between crack and powder cocaine. This provision ensures the retroactive application to offenders sentenced under those provisions before they were modified.

Section 106. New Mandatory Minimum for Interstate Domestic Violence. Those who commit the existing federal crime of interstate domestic violence, 18 U.S.C. § 2261, would be subject to a 10 year mandatory minimum sentence if death results. The statutory maximum would be increased from 20 to 25 years where permanent disfigurement or life-threatening injury occurs, and from 10 to 15 years if serious bodily injury results or if the offender uses a dangerous weapon during the offense.

Section 107. New Mandatory Minimum for Certain Export Control Offenses. The bill imposes a mandatory minimum sentence of 5 years for willfully providing controlled goods or services to terrorists or proliferators of weapons of mass destruction, or providing various controlled goods, services, or defense articles without a license in violation of 50 U.S.C. § 1705.

Section 108. Report and Inventory of All Federal Criminal Offenses. As amended, this section directs that the report address the data by federal district where possible and cases referred by investigative agencies of the Department of Justice.

Section 109. Fentanyl Sentencing Enhancement. The bill provides that a judge must enhance by up to 5 years the sentence of someone whose drug offense involved fentanyl, a substance that when combined with heroin often produces death.

TITLE II: THE CORRECTIONS ACT

Section 202. Recidivism Reduction Programming and Productive Activities. This section requires BOP to make statistically validated recidivism reduction programming available to all eligible prisoners within six years. As an incentive for successfully completing recidivism reduction program, eligible inmates may receive time credit of up to five days for each period of 30 days of programming that they successfully complete. Inmates classified as low risk may receive an additional credit of up to five days for each period of 30 days of program completion. Inmates serving sentences for a second or subsequent federal offense and those with 13 or more criminal history points under the sentencing guidelines are ineligible for time credits. Inmates serving sentences for certain offenses are excluded, including crimes of terrorism and violence.

Section 203. Post-Sentencing Risk and Needs Assessment System. The Attorney General is required to develop a risk and needs assessment system that will determine the recidivism risk of all federal inmates and classify inmates as having a high, moderate, or low risk of recidivism. The assessment system must also identify each inmate's programmatic needs and identify appropriate programming. The system must measure indicators of progress such that each inmate (other than those already classified as low risk) has a meaningful opportunity to progress to a lower risk level during the time of the inmate's incarceration through changes in dynamic risk factors, and that each inmate on prerelease custody (other than those already classified as low risk) has a meaningful opportunity to progress to a lower risk classification through changes in dynamic risk factors.

Section 204. Prerelease Custody. This section allows prisoners to serve an amount of time equal to the credit they have earned for recidivism reduction programming in prerelease custody, provided that the prisoner's most recent risk assessment determined that the prisoner was low or moderate risk and, if moderate risk, that the prisoner's risk of recidivism has declined. It provides that a prisoner permitted to spend a portion of the prisoner's sentence in prerelease custody as a result of completing recidivism reduction programming may spend such time in a residential reentry center, on home confinement, or on community supervision. Inmates placed in home confinement shall be subject to monitoring and be required to remain in their residence, with exceptions for employment and other specified activities. BOP may revoke a prisoner's prerelease custody and require the prisoner to serve the remainder of the prisoner's term of incarceration in prison if the prisoner violates the conditions.

Section 205. Reports. This section requires reports about best practices and notice for veterans. As amended, it also requires a report on how the reduced expenditures and budget savings resulting from the Sentencing Reform and Corrections Act are currently being used and will be used to (1) increase investment in law enforcement and crime prevention to combat gangs of national significance and high-level drug traffickers; (2) hire, train, and equip law enforcement officers and prosecutors; and (3) promote crime reduction programs using evidence-based practices and strategic planning to help reduce crime and criminal recidivism.

Section 206. Additional Tools. This section requires presentence investigation reports to include information about the defendant's history of substance abuse and addiction, the defendant's prior service

in the Armed Forces, and a detailed plan to reduce the defendant's likelihood to abusing drugs or alcohol, address the defendant's risk of recidivism, and prepare the inmate for reentry.

Section 207. Promoting Successful Reentry. This section requires the Attorney General to submit a report evaluating best practices for reentry, and to carry out reentry demonstration projects in judicial districts in consultation with the Administrative Office of the Courts.

Section 208. Parole for Juveniles. The Supreme Court has ruled that the Constitution requires that juveniles convicted as adults and sentenced to life terms must be eligible for parole. The bill creates a system whereby such juveniles in the federal system will be eligible to seek parole after they have served 20 years of their sentence. A judge would apply a range of specified factors in deciding whether to grant parole. If parole were denied, the inmate could apply twice more for parole after five years had elapsed after denial. The provision applies as well to juveniles sentenced as adults to terms longer than 20 years.

Section 209. Compassionate release. The bill would allow certain individuals with no record of violence who are older than 60, as well as terminally ill offenders and those in nursing homes who have served a large portion of their sentences, to be released from prison.

Section 210. Juvenile sealing and expungement. This section permits nonviolent juveniles who are tried as juveniles in federal court, other than for misdemeanor domestic violence offenses, to obtain sealing or expungement of their convictions in certain circumstances. The goal is to enable youthful offenders who live a crime free life to seek employment without regard to earlier errors in their life.

Section 211. Juvenile solitary confinement. The bill would impose limitations on the use of solitary confinement for juveniles housed in federal prison.

Section 212. Accuracy of federal criminal records. Under this section, the Attorney General would establish and enforce procedures for individuals who are to undergo background checks for employment to challenge the accuracy of their federal criminal records, in particular, of arrests without dispositions.

TITLE III – NATIONAL CRIMINAL JUSTICE COMMISSION ACT

Section 302. Findings. The bill states that it is in the national interest to undertake a comprehensive review of the criminal justice system, which has not occurred for more than 50 years.

Section 303. Establishment of Commission. The bill establishes the National Criminal Justice Commission.

Section 304. Purpose of Commission. The Commission will undertake a comprehensive review of the criminal justice system, make recommendations for federal criminal justice reform to the President and Congress, and disseminate findings to federal, state, local, and tribal governments.

Section 305. Review, recommendations, and report. The Commission will undertake a comprehensive review of all areas of the criminal justice system, including federal, state, local, and tribal governments' criminal justice costs, practices, and policies. Within 18 months of its first meeting, the commission will submit recommendations for changes in federal oversight, policies, practices, and laws designed, to prevent, deter, and reduce crime and violence, reduce recidivism, improve cost-effectiveness, and ensure justice at every step of the criminal justice system.

Section 306. Membership. The Commission will consist of 14 members: one appointed by the President, who is co-chair; one appointed by the leader of the Senate in consultation with the opposition party to the President, who is co-chair; two appointed by Senate Democratic leaders in consultation with the ranking Democrat of the Senate Judiciary Committee; two each appointed by Senate Republican leaders, House Republican leaders, and House Democratic leaders in the same fashion; two state and local representatives appointed by the President with the agreement of Senate and House Republican leaders; and two state and local government leaders appointed in the same fashion with Congressional Democratic leaders. Appointees are to be nationally recognized for their expertise in various relevant areas.

Section 307. Administration. The bill addresses an executive director of the commission and compensation and other terms and conditions of service for commissioners.

Section 308. Funding. The bill authorizes the lesser between savings projected due to implementation of Sentencing Reform provisions under this Act or \$14,000,000, over two years, for the commission to complete its work.

Section 309. Sunset. The Commission terminates 60 days after submitting its report to Congress.