

The Smarter Sentencing Act
Senators Durbin (D-IL), Lee (R-UT)
Section by Section Summary

Section 1. Short Title.

This section provides that the legislation may be cited as the “Smarter Sentencing Act of 2023.”

Section 2. 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 15 years to 2, 5, and 10 years. This section reduces but does not eliminate mandatory minimums. 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 3. 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 confirm 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 4. 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 5. 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.