



**FREQUENTLY ASKED QUESTIONS ABOUT
S. 1410, THE SMARTER SENTENCING ACT OF 2013**

Q1: What is the Smarter Sentencing Act of 2013, S. 1410?

A: The Smarter Sentencing Act (SSA), S. 1410, is a bill sponsored by U.S. Senators Richard Durbin (D-IL), Patrick Leahy (D-VT), and Mike Lee (R-UT). It was introduced in the U.S. Senate on August 1, 2013. **It is not a law.**

Q2: Will the SSA become a law?

A: We do not know if or when the bill will become a law. Before it can become a law, the bill must be passed by both Houses of Congress and signed by the President. This could take a long time, or it may never happen. Each year, thousands of bills are introduced in Congress, but very, very few become laws. Keep checking our website, www.famm.org, for updates on the bill's progress.

Q3: What would the SSA do, if passed?

A: The SSA, if passed, would do three things:

1. **Make the Fair Sentencing Act of 2010 (FSA) retroactive.** The FSA increased the amounts of crack cocaine that trigger the five- and 10-year mandatory minimum sentences for federal crack cocaine crimes, as follows:

	5 Year Mandatory Minimum	10 Year Mandatory Minimum	Simple possession of 5 grams of crack
Old law	5 g crack	50 g crack	5-year mandatory minimum sentence
FSA	28 g crack	280 g crack	No mandatory minimum sentence

Sadly, the FSA is not retroactive. The SSA, if passed, would make the FSA retroactive by allowing federal crack cocaine offenders who committed their offenses before August 3, 2010, to make a motion to the court requesting application of the FSA to their cases. (This motion to apply the FSA retroactively could also be made by the director of the Bureau of Prisons (BOP), the court itself, or the prosecutor.) Under the SSA, the motion would be submitted to the judge that sentenced the federal prisoner, and it would be entirely up to that judge to grant or deny a sentence reduction. Prisoners would get only one chance to make this request; if the first motion is denied, any second or additional motions would also be denied.

2. **Reduce the five-, 10-, and 20-year mandatory minimum sentences for certain federal drug crimes to two-, five-, and 10-year terms, respectively.** If passed, the SSA would also require the U.S. Sentencing Commission to change the drug sentencing guidelines to reflect these lower mandatory minimum sentences within 120 days after the bill became



law. The SSA does not say whether this part of the bill would be retroactive and apply to people who have already been sentenced.

3. **Expand the existing “safety valve” exception for federal drug offenses.** Currently, the drug safety valve allows judges to sentence a federal drug offender below the mandatory minimum sentence if the person meets all of these five criteria: (1) the defendant is in Criminal History Category I, as determined by the sentencing guidelines; (2) the defendant did not use violence or possess a gun; (3) the offense did not result in death or serious bodily injury to any person; (4) the defendant was not an organizer, leader, manager, or supervisor of others; and (5) the defendant truthfully provided the Government with all information he had about his role in the crime. The SSA, if passed, would change the drug safety valve so that it applies to people who fall into Criminal History Categories I or II under the U.S. Sentencing Guidelines (rather than just Criminal History Category I). None of the other current safety valve criteria would change. The SSA does not say whether this part of the bill would be retroactive and apply to people who have already been sentenced.

Q4: If passed, would the SSA help state offenders?

A: No. If passed, the bill would only apply to people convicted in federal courts, not state courts.

Q5: Which federal crack cocaine offenders would become eligible to benefit from the SSA, if it becomes law?

A: The SSA, if it becomes law, would apply only to people who meet all of these criteria:

1. The person was convicted in a federal court (not a state court)
2. The person was convicted of an offense involving crack cocaine
3. The person committed this offense **before August 3, 2010** (everyone who committed an offense after this date would not be eligible)
4. The person has not yet received the benefit of the Fair Sentencing Act’s changes to crack cocaine mandatory minimum sentences.

Q6: If passed, would the SSA make career offenders eligible for retroactive application of the Fair Sentencing Act?

A: If it becomes law, the SSA would make some career offenders who were convicted of federal crack cocaine offenses before August 3, 2010, eligible for reduced sentences. This is a complicated area of the law. Career offenders who feel they might be eligible for sentence reductions if the SSA becomes law should contact their attorneys with questions about eligibility.

Q7: Is the entire SSA retroactive?

A: Typically, sentencing reforms are only retroactive if a bill explicitly says they are. Only one part of the SSA would be explicitly retroactive if the bill becomes law: the part that makes the Fair Sentencing Act retroactive. The bill’s other provisions – reducing mandatory minimum drug sentences and expanding the drug safety valve – are not explicitly retroactive in the bill. If the



SSA becomes law, the bill’s silence on the retroactivity of these provisions means that the issue would likely have to be resolved through litigation in the courts.

Q8: Would the SSA change mandatory minimum sentences for any non-drug offenses?

A: No. If passed, the bill would only apply to some federal drug offenses.

Q9: Which mandatory minimum drug sentences would the SSA change?

A: If it becomes law, the SSA would only change some of the mandatory minimum drug sentences for violations of 21 U.S.C. § 841(b)(1)(A) and (B) and 21 U.S.C. § 960(b)(1) and (2). See the chart below for an explanation of which sentences would change. If it becomes law, the SSA would NOT change the following drug mandatory minimum sentences:

- The mandatory 20-year and life sentences under 21 U.S.C. § 841(b)(1)(C) for manufacturing, distributing, or possessing with intent to distribute any Schedule I or II drug, flunitrazepam, GHB, or synthetic drugs, if death or serious bodily injury results from the use of those drugs
- The mandatory 20-year and life-sentences under 21 U.S.C. § 960(b)(3) for drug importation or exportation offenses in which death or serious bodily injury results
- The mandatory 20-year, 30-year, and life sentences for conducting a continuing criminal enterprise under 21 U.S.C. § 848(a)
- The mandatory minimum sentences under 21 U.S.C. §§ 859, 860, and 861 for drug distribution near a school or involving underage or pregnant people.

Federal Offense	Current Mandatory Minimum Sentence	If SSA becomes law
21 U.S.C. § 841(b)(1)(A) Distribution or possession with intent to distribute. Mandatory sentences triggered whenever crime involves 1 kg+ heroin, 5 kg+ cocaine, 280 g+ crack, 100 g+ PCP (pure), 1 kg+ PCP (mixture), 10 g+ LSD, 1,000 kg+ marijuana, 1,000+ marijuana plants, 50 g+ meth (pure), or 500 g+ meth (mixture).	10 years	5 years
	20 years if defendant has a prior conviction for a felony drug offense	10 years
	20 years if death or serious bodily injury results from use of the drug	No change
	Life if defendant has a prior conviction for a felony drug offense and “death or serious bodily injury results from the use” of the drug	No change
21 U.S.C. § 841(b)(1)(B) Distribution or possession with intent to distribute. Mandatory sentences triggered whenever crime involves 100 g+ heroin, 500 g+ cocaine, 28 g+ crack, 10 g+ PCP (pure), 100 g+ PCP (mixture), 1 g+ LSD, 100 kg+ marijuana, 100+ marijuana plants, 5 g+ meth (pure), or 50 g+ meth (mixture).	Life if the defendant has two or more prior convictions for felony drug offenses	No change
	5 years	2 years
	10 years if defendant has a prior conviction for a felony drug offense	5 years
	20 years if death or serious bodily injury results from use of the drug	No change
	Life if defendant has a prior conviction for a felony drug offense and “death or serious bodily injury results from the use” of the drug	No change

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Offense	Current Mandatory Minimum	If SSA becomes law
21 U.S.C. § 960(b)(1) Importing or exporting. Mandatory sentences triggered whenever crime involves 1 kg+ heroin, 5 kg+ cocaine, 280 g+ crack, 100 g+ PCP (pure), 1 kg+ PCP (mixture), 10 g+ LSD, 1,000 kg+ marijuana, 1,000+ marijuana plants, 50 g+ meth (pure), or 500 g+ meth (mixture).	10 years 20 years if defendant has a prior conviction for a felony drug offense 20 years if death or serious bodily injury results from use of the drug Life if defendant has a prior conviction for a felony drug offense and “death or serious bodily injury results from the use” of the drug	5 years 10 years No change No change
21 U.S.C. § 960(b)(2) Importing or exporting. Mandatory sentences triggered whenever crime involves 100 g+ heroin, 500 g+ cocaine, 28 g+ crack, 10 g+ PCP (pure), 100 g+ PCP (mixture), 1 g+ LSD, 100 kg+ marijuana, 100+ marijuana plants, 5 g+ meth (pure), or 50 g+ meth (mixture).	5 years 10 years if defendant has a prior conviction for a felony drug offense 20 years if death or serious bodily injury results from use of the drug Life if defendant has a prior conviction for a felony drug offense and “death or serious bodily injury results from the use” of the drug	2 years 5 years No change No change

Q10: Can FAMM tell people whether they will become eligible for retroactive crack cocaine sentence reductions if the SSA becomes law?

A: No. We do not know all the facts and circumstances of a person’s case. We cannot tell people if they would benefit from the SSA if it becomes a law. People should contact their attorneys for answers to their questions.

Q11: Can FAMM send me or my incarcerated loved one a copy of the bill?

A: No, but you can read or print out the full text of the bill online by searching for the bill by its number, S. 1410, at <http://thomas.loc.gov/home/thomas.php>.