

REFORMS, POTENTIAL IMPACT, AND COST SAVINGS OF THE SMARTER SENTENCING ACT

S. 1410 (Durbin-Lee)

REFORM	WHO QUALIFIES	POTENTIAL IMPACT	COST SAVINGS ¹
Reduces mandatory minimum sentences for certain drug offenses	<p>Federal drug offenders who are subject to mandatory minimum sentences. Changes to MMs* are:</p> <ul style="list-style-type: none"> • 20-year MM becomes 10-year MM for a second drug offense (for certain quantities) • 10-year MM becomes 5-year MM for first drug offense (for certain quantities) • 5-year MM becomes 2-year MM for first drug offense (for certain quantities) <p>The bill makes no changes to the 20-year and life MMs for drug offenses in which death or serious bodily injury results, or for a third or subsequent drug offense. The bill does not eliminate any mandatory minimum sentences.</p>	<p>In FY 2012,</p> <ul style="list-style-type: none"> - 7,089 people were subject to 5-year MMs - 7,592 were subject to 10-year MMs - 614 were subject to MMs greater than 10 years <p>Total = 15,295 people²</p>	<p>One conservative estimate shows savings of at least \$2.7B and 262,000 bed years over 10 years.</p>
Expands “safety valve” exception to mandatory minimums for drug offenses (18 U.S.C. § 3553(f))	<p>Federal drug offenders who meet all the following criteria may be sentenced below the applicable mandatory minimum. The italicized portion indicates the new provision that expands the existing safety valve:</p> <ul style="list-style-type: none"> - The person has one criminal history point under the sentencing guidelines, <i>OR</i> - <i>The person has two criminal history points under the sentencing guidelines AND has not been convicted of a crime of violence, a firearm offense (18 U.S.C. §§ 922 or 924), a sex offense, a federal terrorism offense, racketeering (18 U.S.C. § 1962), or investing drug proceeds (18 U.S.C. § 854), AND</i> - All of the following are true about the person: <ul style="list-style-type: none"> - She “came clean” and confessed her involvement in the crime to the prosecutor - She did not possess a gun or weapon - She used no violence or threats of violence - She was not a leader, organizer, manager, or supervisor, and - No death or serious bodily injury resulted from crime. 	<p>In FY2012, about 24% (5,843) of all drug offenders received the safety valve.³</p> <p>The expanded safety valve could apply to up to 820 additional people per year.⁴</p>	<p>CBO scoring is in progress.</p>
Makes Fair Sentencing Act (FSA) retroactive	<p>Federal drug offenders sentenced before August 3, 2010, who received a MM based on the 100-to-1 crack-powder ratio that Congress found to be racially discriminatory and unanimously rejected by passing the FSA. Reductions are not automatic; prisoners must petition courts for a reduction, which cannot be granted without a court review. Under the FSA:</p> <ul style="list-style-type: none"> • 28 g crack (1 oz.) = 5-year MM • 280 g crack (10 oz.) = 10-year MM 	<p>8,829 people, 87.7% of which are black, would be eligible to petition courts for sentence reductions.⁵</p>	

*MM = mandatory minimum sentence

¹ Julie Samuels, Nancy LaVigne & Samuel Taxy, *STEMMING THE TIDE: STRATEGIES TO REDUCE THE GROWTH AND CUT THE COST OF THE FEDERAL PRISON SYSTEM* App. A (The Urban Institute 2013), *available at* <http://www.urban.org/UploadedPDF/412932-stemming-the-tide.pdf>. These cost-saving projections are conservative and include only marginal costs of feeding, clothing, and caring for a prisoner; they would be significantly higher if they included the cost savings of averted prison construction and prison closures as the prison population declined over time.

² U.S. SENTENCING COMM'N, 2012 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS Table 43 (2013), *available at* http://www.ussc.gov/Research_and_Statistics/Annual_Reports_and_Sourcebooks/2012/sbtoc12.htm. Only 9,069 drug offenders were actually sentenced to mandatory minimum sentences in FY 2012 – 5,843 were exempt from mandatory minimum sentences by virtue of the safety valve, and others were exempt because they provided substantial assistance to the prosecution. *See id.* at Table 44.

³ *Id.* at Table 44.

⁴ Statement of Judge Patti Saris, Chair, U.S. Sentencing Comm'n, submitted to the U.S. Senate Judiciary Committee for the Hearing on “Reevaluating the Effectiveness of Mandatory Minimum Sentences,” Sept. 18, 2013, at 10 *available at*

http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Submissions/20130918_SJC_Mandatory_Minimums.pdf.

⁵ *Id.* (using sentencing data from FY 2012).