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

Original Bill 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. Revisions to the bill were introduced by lawmakers on April 28, 2016.

House Companion Bill: H.R. 3713, the Sentencing Reform Act, contains very similar sentencing reforms, 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.

Incorporating the revisions announced on April 28, 2016, S. 2123 would make the following reforms to federal sentencing laws if it is enacted:

Mandatory minimum sentencing reforms:
- **Reduces** the mandatory life without parole sentence to a 25-year mandatory minimum term for drug offenders who have two or more prior “serious violent felony” or “serious drug felony” convictions (retroactive, except for those with a conviction for any “serious violent felony”)
- **Reduces** the mandatory minimum 20-year sentence to a 15-year mandatory minimum term for drug offenders who have a prior “serious violent felony” or “serious drug felony” conviction (retroactive, except for those with a conviction for any “serious violent felony”)
- **Limits** application of the 25-year mandatory minimum for a second or subsequent conviction under 18 U.S.C. § 924(c) for possession of a gun in the commission of a drug crime or crime of violence. Under the bill, the 25-year mandatory minimum sentence would apply only to § 924(c) convictions that were already final prior to the commission of the current offense, not to second or subsequent § 924(c) charges brought in a single indictment (retroactive, but only for those who do not have any “serious violent felony” conviction and were convicted of a § 924(c) offense that involved the possession (not brandishing or discharge) of a gun during a drug offense (not a crime of violence)).

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” exceptions to mandatory minimum sentences

- **Expands** the existing drug “safety valve” exception (not retroactive) at 18 U.S.C. § 3559(f) so that drug offenders can receive sentences below the mandatory minimum term if:
  - Based on the federal sentencing guidelines, they do not have more than 4 criminal history points (excluding any 1-point prior offenses), or a prior 3-point offense, or a prior 2-point violent offense, or
  - The court determines that the person does not have a prior serious violent felony or serious drug felony conviction and that the 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 were not a leader, organizer, manager, or supervisor in the offense; AND
  - They did not use or possess a gun; AND
  - They pled guilty; AND
  - No death or serious bodily injury resulted to any person.

- **Creates** 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
  - They were not a leader, organizer, manager, or supervisor in the offense; AND
  - They did not act as an importer or exporter, high-level distributor or supplier, wholesaler, or manufacturer, unless the person was a minor or minimal participant, as defined in the sentencing guidelines; AND
  - They did not use or possess a gun; AND
  - They pled guilty; AND
  - No death or serious bodily injury resulted to any person; AND
  - They 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. It is unknown how many people would be impacted by this expansion.
- Creates 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. It is unknown how many people would be impacted by these new sentences.
- Creates a new, mandatory sentencing enhancement to 21 U.S.C. § 841 and § 960 drug offenses: if the drugs involved include an analogue or any detectable amount of the drug fentanyl or are represented as being heroin, courts are required to add up to an additional 5 years in prison to a person’s sentence for the underlying drug offense. It is unknown how many people would be impacted by this enhancement.
What the bill does not do

- Reduce or eliminate the mandatory minimum 5- and 10-year prison terms received by approximately half of all federal drug offenders sentenced annually
- Give judges discretion to give sentences other than the mandatory minimum prison term when a person is addicted, mentally ill, suffering from combat-related trauma, or involved in a drug offense because of domestic abuse or threats of violence from others
- Reform conspiracy and “relevant conduct” rules that allow low-level offenders to be given mandatory minimum sentences for drugs used, sold, or manufactured by codefendants
- Remove the bar on safety valve relief in any case in which a gun was merely present, even if the gun was legally owned and not used in the offense, or was possessed by a codefendant
- Reform consecutive 5-year sentences imposed under 18 U.S.C. § 924(c) for drug offenders who possess handguns, even if the guns are legally owned and not used in the offense
- Reform other mandatory minimum gun possession sentences, even in cases where the guns are legally owned and not used in an offense.

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
- Allows 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.
- The bill does not authorize any funding for rehabilitative programs.

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1 As used throughout S. 2123, “serious violent felony” means a federal or state offense, by whatever designation and wherever committed, consisting of murder (as described in 18 U.S.C. section 1111), manslaughter other than involuntary manslaughter (as described in 18 U.S.C. section 1112), assault with intent to commit murder (as described in 18 U.S.C. section 113(a)), assault with intent to commit rape, aggravated sexual abuse and sexual abuse (as described in 18 U.S.C. sections 2241 and 2242), abusive sexual contact (as described in 18 U.S.C. sections 2244(a)(1) and (a)(2)), kidnapping, aircraft piracy (as described in 49 U.S.C. section 46502), robbery (as described in 18 U.S.C. sections 2111, 2113, or 2118), carjacking (as described in 18 U.S.C. section 2119), extortion, arson, firearms use, firearms possession (as described in 18 U.S.C. section 924(c)), or attempt, conspiracy, or solicitation to commit any of the above offenses, or any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense, OR any of the federal felony assault offenses listed in 18 U.S.C. section 113; AND the person served a prison term of more than 12 months for this offense.

2 As used throughout S. 2123, “serious drug felony” means a federal drug offense carrying a maximum term of imprisonment of 10 years or more is prescribed by law, OR a state offense involving manufacturing, distributing, or possessing with intent to manufacture or distribute drugs carrying a maximum term of imprisonment of 10 years, AND the person served a prison term of more than 12 months for this offense, AND the person’s release from that prison term was within 15 years of beginning the current drug offense.

3 The term “violent offense” means either a state or federal “crime of violence,” as defined in 18 U.S.C. § 16, that is punishable by imprisonment. Section 16 defines a crime of violence as an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other felony offense that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.