

## **H.R. 4261: SAFE JUSTICE ACT OF 2017 (115th Congress)**

**Cosponsored by:** Rep. Bobby Scott (D-VA) and Rep. Jason Lewis (R-MN)

**Introduced on:** November 7, 2017

**Bill status:** The bill was introduced in the U.S. House of Representatives on November 7, 2017. **THE BILL IS NOT A LAW.** To become a law, a bill must be approved by the judiciary committees, passed by both the U.S. House of Representatives and the U.S. Senate, and signed by the President. Each year, many bills are introduced in Congress, and very few become law. We do not know if or when this bill will become law.

**Summary:** The SAFE Justice Act is a bipartisan bill sponsored by Representatives Jason Lewis (R-MN) and Bobby Scott (D-VA) in the U.S. House of Representatives. The bill does not repeal any federal mandatory minimum sentences or reduce drug mandatory minimum sentences across the board, but instead limits the application of federal mandatory minimum drug sentences to the highest-level offenders, as Congress originally intended. The bill also fixes problems in the drug conspiracy and good time credit laws, reforms the federal compassionate release process, and permits prisoners to earn time off their sentences for completing rehabilitative programs, among many other reforms. FAMM supports the bill.

**The SAFE Justice Act, if passed, would make the following sentencing, good time credit, compassionate release, and earned time credit reforms:**

- 1. Limits application of federal mandatory minimum drug sentences to high-level offenders:** Only people who meet the drug quantities listed in 21 U.S.C. sections 841 and 960 and were organizers, leaders, managers, or supervisors of a criminal activity that involved at least 5 people would face mandatory minimum sentences. Everyone else would not be subject to a mandatory minimum sentence, but could still be sentenced up to the law's statutory maximum terms, depending on the drug quantity, number of participants, and role in the offense. This part of the bill would be retroactive (i.e., apply to people already sentenced), if the bill becomes law.
- 2. Fixes conspiracy law and the use of "acquitted conduct":** Under current law, people are held accountable at sentencing for all the drugs involved in a conspiracy -- even if they didn't possess them, profit from them, or know about them. This bill would require that drug offenders only be sentenced for drugs that they actually possessed and sold or knew others were possessing or selling. The bill would also ban courts from increasing people's sentences for "acquitted conduct" -- crimes they were charged with, but not actually convicted of.
- 3. Expands the existing "safety valve":** The bill would enlarge the safety valve so that courts could sentence a person below the mandatory minimum term for drug offenses and gun offenses that occurred during drug offenses (18 U.S.C. § 924(c)), as long as the person meets all of these criteria:
  - is in criminal history category I (0 to 1 criminal history points under the sentencing guidelines) after any downward departure, OR has less than 4 criminal history points under the sentencing guidelines after any downward departure, so long as the person does not have a current

conviction for a gun offense under 18 U.S.C. sections 922 or 924, a sex offense, a violent offense, or a terrorism offense, AND

- did not use violence or threats, AND

- the offense did not result in death or serious bodily injury, AND

- the person was not a leader, manager, organizer, or supervisor of an offense involving at least 5 people, or convicted of a continuing criminal enterprise (21 U.S.C. § 848), AND

- the person pled guilty.

This part of the bill would be retroactive (i.e., apply to people already sentenced), if the bill becomes law.

**4. Creates a new "safety valve" for veterans, the mentally ill, victims of abuse, and those with addictions:** The bill would create a new safety valve so that courts could sentence a person below the mandatory minimum term for drug offenses and gun offenses that occurred during drug offenses (18 U.S.C. § 924(c)), as long as the person meets all of these criteria:

- The person committed the crime as a result of mental illness, cognitive defects, or a history of persistent or serious substance abuse or addiction; OR financial, emotional, or mental distress; OR trauma suffered while serving on active duty in an armed conflict zone for a branch of the United States military; OR victimization stemming from any combination of physical mental, emotional, or psychological abuse or domestic violence, if the offense was committed at the direction of another individual who was a more culpable participant in the instant offense or played a significantly greater role in the offense or effectively coerced the defendant's involvement in the offense by means of threats or abuse either personally or from any person or group, AND

- the defendant did not use violence or credible threats of violence in connection with the offense, AND

- the offense did not result in death or serious bodily injury to any person, AND

- the person was not a leader, manager, organizer, or supervisor of an offense involving at least 5 people, or convicted of a continuing criminal enterprise, AND

- the person pled guilty.

This part of the bill would be retroactive (i.e., apply to people already sentenced), if the bill becomes law.

**4. Fixes the technical error that leads to section 924(c) "stacking":** The bill would reduce the 25-year mandatory minimum sentence for a second or subsequent 18 U.S.C. § 924(c) violation to a 15-year mandatory minimum. It would also clarify that the 15-year mandatory minimum sentence for second or subsequent gun possession/use offenses only applies when the prior 924(c) violation is a final conviction. In other words, multiple counts of 924(c) charges in the same indictment would no longer lead to stacked sentences like the 55-year one received by [Weldon Angelos](#). This part of the bill would be retroactive(i.e., apply to people already sentenced), if the bill becomes law.

**5. Makes the [Fair Sentencing Act of 2010](#) retroactive:** Federal prisoners serving mandatory minimum sentences for crack cocaine crimes committed before August 3, 2010, would be allowed to petition the court for a sentence reduction in line with the new, 18-to-1 crack-powder cocaine ratio Congress unanimously passed in 2010.

**6. Reduces the life without parole mandatory minimum terms for drugs:** Reduces the

mandatory minimum life sentences for a third felony drug offense or a second drug offense that results in death or serious bodily injury under 21 U.S.C. section 841 to a mandatory minimum term of 25 years. These changes would be retroactive, if the bill becomes law.

**7. Redefines and limits the kinds of prior convictions** that can be used to increase mandatory minimum drug sentences to 10, 20 years, or higher and that can be used to trigger the 15-year mandatory minimum sentence for gun possession under the Armed Career Criminal Act (18 U.S.C. section 924(e)). The bill also strengthens the procedural and notice requirements when prosecutors want to increase sentences based on prior convictions.

**8. Allows prisoners to earn up to 120 days per year off their sentences for completing rehabilitative programs:** The bill would require the Bureau of Prisons (BOP) to create a risk assessment tool that would be used to assess each prisoner's risk level and needs twice each year. The assessment would help BOP create a case plan for the prisoner's rehabilitation. Federal prisoners not convicted of homicide, terrorism offenses, or sex offenses could earn up to 120 days of time credits each year for rehabilitative programming they complete in prison. These credits would be real sentence reductions, not time spent in another form of confinement such as a halfway house or home detention. Even if a person cannot earn time credits, he would be allowed to earn other incentives for program completion, such as increased commissary, phone, or visitation privileges. This reform would be retroactive, allowing prisoners to get credits for programs already completed.

**9. Allows prisoners to earn up to one year off their sentences** for completing residential drug treatment or working in federal prison industries. These credits would be capped at one year, and could be earned in addition to other time credits for other programming completed.

**10. Fixes the technical error in good time credit calculation:** Prisoners could earn up to 54 days of credit for good behavior per year in prison, rather than 47 days, as is current practice. This change would be retroactive, allowing federal prisoners up to an additional 7 days of good time credit for each year already served in prison.

**11. Expands compassionate release and elderly prisoner release:** The bill would permit prisoners and the courts, as well as the federal Bureau of Prisons, to request a compassionate release for extraordinary and compelling reasons, or for prisoners who are at least 60 years old, have an extraordinary health condition, or have been notified that the primary caregiver of the prisoner's minor child has died or become incapacitated or is unable to care for the child any longer or cannot be cared for by other family members and is at risk of being placed in foster care.

**12. Increases accountability for halfway houses:** The bill would require the BOP to enter performance-based contracts with halfway house providers, mandating that halfway houses be assessed each year and that they show they are reducing recidivism. The BOP would be required to start using performance-based contracts within one year of passage of the bill.

**13. Reinvests savings from the bill into law enforcement and prison services:** The bill would permit any savings it generates to be spent on law enforcement, including providing bigger pensions, bulletproof vests, "Blue Alerts," more DNA and forensic testing, more mental health treatment for law enforcement officers, better data collection, more drug treatment and prevention programs and resources in prison, and more mental health and drug treatment staff for federal prisons.