

Understanding the SECURE Act, S 2192 Expensive and Unfounded

The Bill: The “SECURE Act of 2017” is a major border security and immigration enforcement bill sponsored by Senator Chuck Grassley (R-TX). The bill attempts to deter illegal immigration through the creation of new mandatory minimums for immigration related offenses and expanding the already overly broad definition of immigrant aggravated felonies.

The Problem: The SECURE Act of 2017 attempts to solve one of America’s most complex issues with unsubstantiated one-size-fits-all solutions and will likely

- **Increase the number of unjust and absurd federal sentences.**
 - This bill includes a version of Kate’s Law, which relies on mandatory minimums to deter illegal reentry. This proposal would give the same 5-year mandatory minimum sentence to someone entering the country illegally to attend a family member’s funeral as someone entering the country to commit a crime of violence.
 - This bill also expands the mandatory minimum provisions under 18 USC 924(c) to apply to “alien smuggling crimes”. These mandatory gun enhancements can be “stacked” and must be served consecutively meaning someone assisting a family of 5 into the country, armed with a legal firearm, could receive a mandatory minimum of 25-years added to their underlying sentence.
- **Dramatically increase the federal prison population and require the construction of new federal prisons.**
 - As a standalone bill, Kate’s Law was estimated to increase the federal prison population by as much as 57,000 people and require the construction of 30 new facilities over 5 years. With the new mandatory minimums in this bill, this estimate is likely to be much higher. Crowded prisons put the safety of inmates and correctional officers at risk.
- **Drive up correctional spending at the federal level.**
 - The Congressional Budget Office has not yet scored S 2192, but with the creation of over 20 unique mandatory minimum sentences, we estimate that the bill will exceed \$1 billion in correction costs annually.
 - The inclusion of Kate’s Law alone will increase prisoner costs by at least \$852 million annually based on most recently available data from the Bureau of Prisons, Congressional Budget Office, and the United States Sentencing Commission.ⁱ
 - These astronomical cost increases undermine any cost savings bi-partisan sentencing reform efforts offer.
- **Have little to no effect on illegal immigration.**
 - We know that mandatory minimums do not deter crime generally, and there is no evidence to suggest that they would be successful in curbing illegal immigration. People enter the U.S. through illegal channels for a wide variety of reasons such as religious persecution, overwhelming poverty, or familial obligations. Just as mandatory minimums fail to reduce drug use, the SECURE Act of 2017 will fail to curb undocumented immigration.

Violation	Current Law		S.2192	
	Mandatory minimum	Statutory maximum	Mandatory minimum	Statutory maximum
18 U.S.C. § 924(c): Uses or carries a firearm during an “alien smuggling crime”	N/A	N/A	5 years*; second or subsequent conviction 25 years.**	N/A
18 U.S.C. § 924(c): If a firearm is brandished during an “alien smuggling crime”	N/A	N/A	7 years; second or subsequent conviction 25 years.	N/A
18 U.S.C. § 924(c): If a firearm is discharged during an “alien smuggling crime”.	N/A	N/A	10 years; second or subsequent conviction 25 years.	N/A
New provision: 18 U.S.C. §1041 Fraud in connection with the transfer of custody of unaccompanied alien children.	N/A	N/A	1 year. If primary purpose to subject the child to sexually explicit activity or any other form of exploitation: 15 years	
8 U.S.C. § 1324 (a)(i): knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;	None	10 years	5 years, if it is the third or subsequent conviction.	25 years, if it is the third or subsequent conviction.
§1324 (a)(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien	None	5 years	5 years, if it is the third or subsequent conviction.	25 years, if it is the third or subsequent conviction.

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within the United States by means of transportation or otherwise, in furtherance of such violation of law;				
§1324 (a)(iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;	None	5-years	5 years, if it is the third or subsequent conviction	25 years, if it is the third or subsequent conviction.
§1324(a)(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law;	None	5-years	5 years, if it is the third or subsequent conviction	25 years, if it is the third or subsequent conviction.
§1324(b)(iv) illegal bringing in or harboring of aliens that recklessly, knowingly, or intentionally results in a victim being involuntarily forced into labor or prostitution.	N/A	N/A	5 years	25 years
§1324(b)(v) illegal bringing in or harboring of aliens during and in relation to which any person is subjected to an involuntary sexual act	N/A	N/A	5 years	25 years
8 U.S.C. 1324(b)(vi) illegal bringing in or harboring of alien that causes serious bodily injury to, or places in jeopardy the life of, any person.	None	20 years	10 years	20 years
New provision 18 U.S.C. § 581 (a): Any alien unlawfully present in the United States, who commits, conspires to commit, or attempts to commit a an offense under Federal, State, or Tribal law, that has, as an element, the use or attempted use of physical force or the threatened use of physical force or a deadly weapon or a drug trafficking crime.	N/A	N/A	5 years. If the offender has been ordered removed at the time of the offense the minimum is 15 years.	N/A
New provision: 8 U.S.C. § 1325 (e) Any alien who illegally enters the country for the purpose of engaging in, or with the intent to engage in, any Federal crime of terrorism.	N/A	N/A	10 years	30 years

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8 U.S.C. § 1326(a): Attempted or actual illegal reentry after deportation or removal.	None	2 years	5 years, if person has prior aggravated felony ⁱⁱ *** conviction or 2 prior illegal reentry convictions	5 years; 20 years, if person has prior aggravated felony conviction or 2 prior illegal reentry convictions
§ 1326(b)(1): Attempted or actual illegal reentry of people with three or more prior misdemeanor convictions involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony)	None	10 years	5 years, if person has prior aggravated felony conviction or 2 prior illegal reentry convictions	10 years; 20 years, if person has prior aggravated felony conviction or 2 prior illegal reentry convictions
§ 1326(b)(2): Attempted or actual illegal reentry of people with a prior conviction for an aggravated felony	None	20 years	5 years	20 years
§ 1326(b)(3): Attempted or actual illegal reentry of people previously excluded or removed for national security reasons	10 years, consecutive	None listed	15 years, consecutive	20 years, if person has prior aggravated felony conviction or 2 prior illegal reentry convictions
§ 1326(b)(4): Attempted or actual illegal reentry of people with a prior conviction for a nonviolent offense	None	10 years	5 years, if person has prior aggravated felony conviction or 2 prior illegal reentry convictions	10 years; 20 years, if person has prior aggravated felony conviction or 2 prior illegal reentry convictions
New provision: Attempted or actual illegal reentry after being denied admission, excluded, deported or removed 2 or more times.	n/a	n/a	5 years, if person has prior aggravated felony conviction or 2 prior illegal reentry convictions	10 years; 20 years, if person has prior aggravated felony conviction or 2 prior illegal reentry convictions

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18 U.S.C. § 1956 (a)(1)(B) (i) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity knowing that the transaction is designed in whole or in part to conceal, or is intended to conceal, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity.	N/A	N/A	Mandatory minimum for underlying offense is imposed.	
18 U.S.C. § 1956 (2) (B) (i) Who ever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States knowing that the monetary instrument is designed in whole or in part to conceal or disguise, or is designed to conceal or disguise, the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity.	N/A	N/A	Mandatory minimum for underlying offense is imposed.	
18 U.S.C. § 758 (c)(4) Unlawful flight from immigration or custom controls that results in death.	None	5 years	Any term of years	Life.
18 U.S.C. § 555 (a) Any person who knowingly constructs or finances the construction of a tunnel or subterranean passage that crosses the international border between the United States and another country, other than a lawfully authorized tunnel or passage known to the Secretary of Homeland Security and subject to inspection by Immigration and Customs Enforcement, shall be fined under this title and imprisoned for not more than 20 years.	None	20 years	7 years	20 years
18 U.S.C. § 555 (b) Any person who knows or recklessly disregards the construction or use of a tunnel or passage described in subsection (a) on land	None	10 years	3 years	10 years

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that the person owns or controls shall be fined under this title and imprisoned for not more than 10 years.				
18 U.S.C. § 1546 Fraud and misuses of visas, permits, and other documents	None	10 years (first or second offense not related to drug trafficking or terrorism) 15 (in case of any other offense)	5 years (first or second offense not related to drug trafficking or terrorism); 7 (in case of any other offense).	10 (first or second offense not related to drug trafficking or terrorism); 15 (in case of any other offense).
18 U.S.C. § 1546 Fraud and misuses of visas, permits, and other documents in connection to international terrorism.	None	25 years	12 years	25 years
18 U.S.C. § 1546 Fraud and misuse of visas, permits, and other documents in connection to drug trafficking	None	20 years	10 years	20 years
			* If the weapon is a short-barreled rifle, short barreled shotgun, or semiautomatic assault weapon – 10 years; If the weapon is a machine gun or a destructive device or is equipped with a silencer – 30 years.	**For second or subsequent violation involving machine gun, destructive device, or a weapon equipped with a silencer the punishment is life in prison.

¹ In FY2015, approximately 5,879 illegal reentry offenders received a sentence enhancement for having prior felonies that would qualify as aggravated felonies. Additionally approximately 1,391 offenders in FY2013 (most recently available data) had one prior conviction for illegal reentry and two or more prior

deportations. Assuming these numbers hold true and each case results in a conviction, the Kate’s Law provisions will cost \$852 million per year based on an annual cost of incarceration figure of \$31,977.65 and a sentence length increase of 44 months (the average sentence is currently 16 months).

ⁱⁱ See 8 U.S.C. § 1101(a)(43) (2016). Aggravated felonies include state or federal convictions or foreign convictions for which the prison term was completed within the last 15 years. Aggravated felonies are (A) murder, rape, or sexual abuse of a minor; (B) illicit trafficking in a controlled substance (as defined in 21 U.S.C. § 802), including a drug trafficking crime (as defined in 18 U.S.C. § 924(c)); (C) illicit trafficking in firearms or destructive devices (as defined in 18 U.S.C. § 921) or in explosive materials (as defined in 18 U.S.C. § 841(c)); (D) laundering of monetary instruments (as described in 18 U.S.C. §§ 1956, 1957), if the amount exceeds \$10,000; (E) an offense described in 18 U.S.C. §§ 842(h) or (i), 844(d), (e), (f), (g), (h), or (i) (relating to explosive materials offenses); 18 U.S.C. §§ 922(g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) (relating to firearms offenses); or 26 U.S.C. § 5861 (relating to firearms offenses); (F) a crime of violence (as defined in 18 U.S.C. § 16, but not including a purely political offense) for which the term of imprisonment is at least one year; (G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment is at least one year; (H) an offense described in 18 U.S.C. §§ 875, 876, 877, or 1202 (relating to the demand for or receipt of ransom); (I) an offense described in 18 U.S.C. §§ 2251, 2251A, 2252 (relating to child pornography); (J) an offense described in 18 U.S.C. § 1962 (relating to racketeer influenced corrupt organizations), or an offense described in § 1084 (if it is a second or subsequent offense) or § 1955 (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed; (K) an offense that— (i) relates to the owning, controlling, managing, or supervising of a prostitution business; (ii) is described in 18 U.S.C. §§ 2421, 2422 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or (iii) is described in any of 18 U.S.C. §§ 1581–1585 or 1588–1591 (relating to peonage, slavery, involuntary servitude, and trafficking in persons); (L) an offense described in— (i) 18 U.S.C. §§ 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason); (ii) 50 U.S.C. § 3121 (relating to protecting the identity of undercover intelligence agents); or (iii) 50 U.S.C. § 3121 (relating to protecting the identity of undercover agents); (M) An offense that involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000, or is described in 26 U.S.C. § 7201 (relating to tax evasion) in which the revenue loss to the government exceeds \$10,000; (N) an offense described in paragraph 8 U.S.C. § 1324(1)(A) or (2) (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien’s spouse, child, or parent (and no other individual) to violate a provision of this chapter; (O) an offense described in 8 U.S.C. §§ 1325(a), 1326 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph; (P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of 18 U.S.C. §§ 1543, 1546(a) (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien’s spouse, child, or parent (and no other individual) to violate a provision of this chapter; (Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more; (R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year; (S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year; (T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years’ imprisonment or more may be imposed; and (U) an attempt or conspiracy to commit an offense described in this paragraph.