

CRIMINAL JUSTICE LEGAL FOUNDATION LEGISLATION ANALYSIS
S2123: THE SENTENCING REFORM AND CORRECTIONS ACT OF 2015

Background:

The Sentencing Reform and Corrections Act of 2015 has been introduced by Republicans and Democrats on the Senate Judiciary Committee, including Chairman Charles Grassley, and members Lindsey Graham, Richard Durban, Chuck Schumer, and Patrick Leahy.

The measure enjoys the support of numerous anti-incarceration advocates, including the American Bar Association, the American Civil Liberties Union, the Brennan Center for Justice, the Center for American Progress, Families Against Mandatory Minimums, the NAACP, The Sentencing Project, and Right on Crime. The National Association of Assistant United States Attorneys opposes the measure.

Major Sentencing Provisions:

1. The Act would reduce sentences primarily for drug offenders, including some who used a gun, if they have not been previously convicted of a similar crime. The sentencing reductions would apply retroactively, allowing federal judges to release inmates sentenced under previous law.
2. The Act provides federal judges with discretion to give reduced sentences for drug offenders who were not convicted of using a gun or violence, were not the leaders of the crime, are not part of the command structure of an organized operation such as a drug gang or cartel, and who cooperate with prosecutors.
3. The Act increases the maximum sentence for a felon in possession of a firearm from 10 to 15 years. It reduces the minimum sentence for armed career criminals under the Armed Career Criminal Act from 15 to 10 years and the minimum sentence for repeat offenders from 25 to 15 years. It applies the reductions retroactively, allowing for releases of criminals sentenced under previous law.
4. The Act allows for resentencing of criminals sentenced prior to the 2010 passage of the Fair Sentencing Act, which reduced the disparity between crack and powder cocaine.
5. The Act increases the minimum federal sentences for the rare offense of Interstate Domestic Violence and for certain export control offenses.

Major Corrections Provisions:

1. The Act requires the Attorney General to submit a report on all federal offenses, including criminal and regulatory offenses, and the penalties proscribed for those offenses.
2. The Act requires the Attorney General to review prison rehabilitation programs, including work programs, and assess their effectiveness. The Attorney General is also required to identify

products currently made by foreign manufacturers that could be produced by federal prison inmates and present a plan for improving rehabilitation and work programs.

3. The Act requires that such programs be made available to all eligible federal inmates within 18 months of enactment.
4. The Act requires the Attorney General to develop risk and needs assessment protocols and apply them to inmates and monitor progress,
5. The Act allows inmates to be released early to programs in residential reentry centers, home confinement, or on some form of supervision (parole/probation).
6. The Act would make juveniles sentenced to life terms eligible for parole after serving 20 years and allow judges to grant parole to qualifying candidates.
7. The Act would allow the release of inmates who are over the age 60, terminally ill, or in nursing homes.
8. The Act allows some juveniles convicted of federal crimes to have their records sealed or expunged.
9. The Act would restrict solitary confinement of juveniles in federal prisons.

Analysis:

The Sentencing Provisions of this measure, if passed, would significantly reduce the sentences of an unknown number of drug dealers, including drug dealers who used firearms and habitual federal felons who used firearms. The worst habitual offenders, those who received sentences of 25 years, would have 10 years cut from their sentences. These reductions would apply retroactively, leaving unelected, politically appointed federal judges with the discretion to determine which inmates should be released.

The measure also provides federal judges with “safety valves,” which gives discretion to depart from minimum sentences and give a reduced sentence for offenders based upon some specific and some vague factors, including “the likelihood that the defendant will commit other crimes.”

Because almost all federal felony convictions are the result of plea negotiations, most of the criminals eligible for early release or “safety valve” sentence reductions will have committed more serious offenses than their criminal record indicates.

These provisions will certainly result in the early release or shorter sentencing of tens of thousands of drug dealers and other serious offenders while they are young enough to continue

their criminal careers, including an unknown number of habitual criminals who had earned 25-year sentences. The guidelines governing the discretion of federal judges to release these criminals allow incomplete information and the judges personal views to influence the process.

The new mandatory minimums provided by this measure are for two rarely prosecuted offenses. Neither will have any real impact on crime or public safety.

The Corrections Provisions of this measure provide a stronger and more appropriate focus on inmate rehabilitation than under current federal law. Of particular value are the provisions encouraging the expansion of inmate work to include the manufacture of products currently made offshore and provisions encouraging vocational training and partnerships with private entities that lead to certification and employment.

Provisions which encourage partnerships with non-profit and faith-based organizations for rehabilitation programming are also valuable improvements.

The Act's provision for parole of juveniles serving life terms after 20 years will affect only a small number of federal inmates, but may allow for the early release of offenders whose crimes would have qualified them for a death sentence had they been committed when they were over 18 years old.

The Act's Compassionate Release provision, if applied correctly to non-violent offenders over 60 years old or incapacitated by health problems, will have no impact on public safety, but will undoubtedly transfer costs for housing or care to other federal or state programs.

The Act's provision regarding prerelease custody relies on risk assessment protocols that have proven inaccurate in numerous tragic cases. According to the Act, federal inmates qualifying for pre (read early) release to a residential reentry center, home custody, or community supervision, will, in fact, be released into residential neighborhoods putting unsuspecting families at risk. Before this provision is implemented, an independent analysis by academic researchers not involved in these types of programs, comparing the number of crimes committed by inmates who have been released into these environments to the number of inmates who successfully complete their prerelease custody and avoid committing new offenses for three years, needs to be conducted to determine if expanding this type of program is worth the cost in both tax dollars and public safety.

The Act's provisions of Juvenile Solitary Confinement and Juvenile Record Sealing and Expungement will have a minimal impact on federal prisons or public safety.

The Act's provisions regarding the accuracy of federal criminal records, to the extent that it improves the availability and accuracy of information available to law enforcement, employers, and firearms dealers, would be beneficial to public safety.

Conclusion:

This is primarily a prison inmate early release and reduced sentencing measure which will provide sentencing windfalls for far more dangerous and violent criminals than for those who may actually deserve another chance.

For the most part, it will be administered by federal judges who cannot be held accountable for the consequences of their decisions. As a result, thousands of dangerous criminals will be released to commit more crimes and a significantly increased number of law-abiding Americans will become crime victims.

It is doubtful that there will be any appreciable savings in federal prison expenditures or that the ratio of minorities convicted of federal crimes will decline. It is more likely that the early release of federal felons into urban neighborhoods will increase both the volume and seriousness of minority crime, resulting in an increase in the number of criminals, too violent to qualify for safety valves, who will be sentenced to federal prison.

With the exception of the provisions allowing federal felons passing a flawed risk-assessment process to be released early for placement in residential neighborhoods, the corrections reforms are worthwhile and should be implemented.