

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—113th Cong., 2d Sess.

S. 1410

To focus limited Federal resources on the most serious offenders.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. DURBIN (for himself, Mr. LEE,
Mr. LEAHY, Mr. FLAKE, Mr. WHITEHOUSE, and Mrs.
FEINSTEIN)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Smarter Sentencing
5 Act of 2014”.

6 **SEC. 2. APPLICABILITY OF STATUTORY MINIMUMS.**

7 Section 3553(f)(1) of title 18, United States Code,
8 is amended to read as follows:

9 “(1) the defendant—

1 “(A) does not have more than 1 criminal
2 history point, as determined under the sen-
3 tencing guidelines; or

4 “(B)(i) does not have more than 2 criminal
5 history points, as determined under the sen-
6 tencing guidelines;

7 “(ii) has no prior convictions for any of-
8 fense that has as an element the use, attempted
9 use, or threatened use of physical force against
10 the person of another; and

11 “(iii) has not been convicted of—

12 “(I) a firearm offense under section
13 922 or 924;

14 “(II) a sex offense (as defined in sec-
15 tion 111 of the Adam Walsh Child Protec-
16 tion and Safety Act of 2006 (42 U.S.C.
17 16911));

18 “(III) a Federal crime of terrorism
19 (as defined in section 2332b(g)(5));

20 “(IV) a racketeering offense under
21 section 1962; or

22 “(V) conspiring to use and invest il-
23 licit drug profits under section 414 of the
24 Controlled Substances Act (21 U.S.C.
25 854);”.

1 **SEC. 3. CLARIFICATION OF APPLICABILITY OF THE FAIR**
2 **SENTENCING ACT.**

3 (a) DEFINITION OF COVERED OFFENSE.—In this
4 section, the term “covered offense” means a violation of
5 a Federal criminal statute, the statutory penalties for
6 which were modified by section 2 or 3 of the Fair Sen-
7 tencing Act of 2010 (Public Law 111–220; 124 Stat.
8 2372), that was committed before August 3, 2010.

9 (b) DEFENDANTS PREVIOUSLY SENTENCED.—A
10 court that imposed a sentence for a covered offense, may,
11 on motion of the defendant, the Director of the Bureau
12 of Prisons, the attorney for the Government, or the court,
13 impose a reduced sentence as if sections 2 and 3 of the
14 Fair Sentencing Act of 2010 (Public Law 111–220; 124
15 Stat. 2372) were in effect at the time the covered offense
16 was committed.

17 (c) LIMITATIONS.—No court shall entertain a motion
18 made under this section to reduce a sentence if the sen-
19 tence was previously imposed or previously reduced in ac-
20 cordance with the amendments made by sections 2 and
21 3 of the Fair Sentencing Act of 2010 (Public Law 111–
22 220; 124 Stat. 2372) or if a motion made under this sec-
23 tion to reduce the sentence was previously denied. Nothing
24 in this section shall be construed to require a court to re-
25 duce any sentence pursuant to this section.

1 **SEC. 4. SENTENCING MODIFICATIONS FOR CERTAIN DRUG**
2 **OFFENSES.**

3 (a) CONTROLLED SUBSTANCES ACT.—Section
4 401(b)(1) of the Controlled Substances Act (21 U.S.C.
5 841(b)(1)) is amended—

6 (1) in subparagraph (A), in the flush text fol-
7 lowing clause (viii)—

8 (A) by striking “10 years or more” and in-
9 serting “5 years or more”; and

10 (B) by striking “such person shall be sen-
11 tenced to a term of imprisonment which may
12 not be less than 20 years and” and inserting
13 “such person shall be sentenced to a term of
14 imprisonment which may not be less than 10
15 years and”; and

16 (2) in subparagraph (B), in the flush text fol-
17 lowing clause (viii)—

18 (A) by striking “5 years” and inserting “2
19 years”; and

20 (B) by striking “not be less than 10 years”
21 and inserting “not be less than 5 years”.

22 (b) CONTROLLED SUBSTANCES IMPORT AND EXPORT
23 ACT.—Section 1010(b) of the Controlled Substances Im-
24 port and Export Act (21 U.S.C. 960(b)) is amended—

25 (1) in paragraph (1), in the flush text following
26 subparagraph (H)—

1 (A) by striking “not less than 10 years”
2 and inserting “not less than 5 years”; and

3 (B) by striking “such person shall be sen-
4 tenced to a term of imprisonment of not less
5 than 20 years” and inserting “such person shall
6 be sentenced to a term of imprisonment of not
7 less than 10 years”; and

8 (2) in paragraph (2), in the flush text following
9 subparagraph (H)—

10 (A) by striking “5 years” and inserting “2
11 years”; and

12 (B) by striking “10 years” and inserting
13 “5 years”.

14 **SEC. 5. DIRECTIVE TO THE SENTENCING COMMISSION.**

15 (a) DIRECTIVE TO SENTENCING COMMISSION.—Pur-
16 suant to its authority under section 994(p) of title 28,
17 United States Code, and in accordance with this section,
18 the United States Sentencing Commission shall review and
19 amend, if appropriate, its guidelines and its policy state-
20 ments applicable to persons convicted of an offense under
21 section 401 of the Controlled Substances Act (21 U.S.C.
22 841) or section 1010 of the Controlled Substances Import
23 and Export Act (21 U.S.C. 960) to ensure that the guide-
24 lines and policy statements are consistent with the amend-
25 ments made by sections 2 and 4 of this Act and reflect

1 the intent of Congress that such penalties be decreased
2 in accordance with the amendments made by section 4 of
3 this Act.

4 (b) CONSIDERATIONS.—In carrying out this section,
5 the United States Sentencing Commission shall con-
6 sider—

7 (1) the mandate of the United States Sen-
8 tencing Commission, under section 994(g) of title
9 28, United States Code, to formulate the sentencing
10 guidelines in such a way as to “minimize the likeli-
11 hood that the Federal prison population will exceed
12 the capacity of the Federal prisons”;

13 (2) the findings and conclusions of the United
14 States Sentencing Commission in its October 2011
15 report to Congress entitled, Mandatory Minimum
16 Penalties in the Federal Criminal Justice System;

17 (3) the fiscal implications of any amendments
18 or revisions to the sentencing guidelines or policy
19 statements made by the United States Sentencing
20 Commission;

21 (4) the relevant public safety concerns involved
22 in the considerations before the United States Sen-
23 tencing Commission;

1 (5) the intent of Congress that severe sentences
2 for violent, repeat, and serious drug traffickers who
3 present public safety risks remain in place; and

4 (6) the need to reduce and prevent racial dis-
5 parities in Federal sentencing.

6 (c) **EMERGENCY AUTHORITY.**—The United States
7 Sentencing Commission shall—

8 (1) promulgate the guidelines, policy state-
9 ments, or amendments provided for in this Act as
10 soon as practicable, and in any event not later than
11 120 days after the date of enactment of this Act, in
12 accordance with the procedure set forth in section
13 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994
14 note), as though the authority under that Act had
15 not expired; and

16 (2) pursuant to the emergency authority pro-
17 vided under paragraph (1), make such conforming
18 amendments to the Federal sentencing guidelines as
19 the Commission determines necessary to achieve
20 consistency with other guideline provisions and ap-
21 plicable law.

22 **SEC. 6. REPORT BY ATTORNEY GENERAL.**

23 Not later than 6 months after the date of enactment
24 of this Act, the Attorney General shall submit to the Com-
25 mittees on the Judiciary of the House of Representatives

1 and the Senate a report outlining how the reduced expend-
2 itures on Federal corrections and the cost savings result-
3 ing from this Act will be used to help reduce overcrowding
4 in the Federal Bureau of Prisons, help increase proper in-
5 vestment in law enforcement and crime prevention, and
6 help reduce criminal recidivism, thereby increasing the ef-
7 fectiveness of Federal criminal justice spending.

8 **SEC. 7. REPORT ON FEDERAL CRIMINAL OFFENSES.**

9 (a) DEFINITIONS.—In this section—

10 (1) the term “criminal regulatory offense”
11 means a Federal regulation that is enforceable by a
12 criminal penalty; and

13 (2) the term “criminal statutory offense”
14 means a criminal offense under a Federal statute.

15 (b) REPORT ON CRIMINAL STATUTORY OFFENSES.—

16 Not later than 1 year after the date of enactment of this
17 Act, the Attorney General shall submit to the Committee
18 on the Judiciary of the Senate and the Committee on the
19 Judiciary of the House of Representatives a report, which
20 shall include—

21 (1) a list of all criminal statutory offenses, in-
22 cluding a list of the elements for each criminal stat-
23 utory offense; and

24 (2) for each criminal statutory offense listed
25 under paragraph (1)—

1 (A) the potential criminal penalty for the
2 criminal statutory offense;

3 (B) the number of prosecutions for the
4 criminal statutory offense brought by the De-
5 partment of Justice each year for the 15-year
6 period preceding the date of enactment of this
7 Act; and

8 (C) the mens rea requirement for the
9 criminal statutory offense.

10 (c) REPORT ON CRIMINAL REGULATORY OF-
11 FENSES.—

12 (1) REPORTS.—Not later than 1 year after the
13 date of enactment of this Act, the head of each Fed-
14 eral agency described in paragraph (2) shall submit
15 to the Committee on the Judiciary of the Senate and
16 the Committee on the Judiciary of the House of
17 Representatives a report, which shall include—

18 (A) a list of all criminal regulatory of-
19 fenses enforceable by the agency; and

20 (B) for each criminal regulatory offense
21 listed under subparagraph (A)—

22 (i) the potential criminal penalty for a
23 violation of the criminal regulatory offense;

24 (ii) the number of violations of the
25 criminal regulatory offense referred to the

1 Department of Justice for prosecution in
2 each of the years during the 15-year period
3 preceding the date of enactment of this
4 Act; and

5 (iii) the mens rea requirement for the
6 criminal regulatory offense.

7 (2) AGENCIES DESCRIBED.—The Federal agen-
8 cies described in this paragraph are the Department
9 of Agriculture, the Department of Commerce, the
10 Department of Education, the Department of En-
11 ergy, the Department of Health and Human Serv-
12 ices, the Department of Homeland Security, the De-
13 partment of Housing and Urban Development, the
14 Department of the Interior, the Department of
15 Labor, the Department of Transportation, the De-
16 partment of the Treasury, the Commodity Futures
17 Trading Commission, the Consumer Product Safety
18 Commission, the Equal Employment Opportunity
19 Commission, the Export-Import Bank of the United
20 States, the Farm Credit Administration, the Federal
21 Communications Commission, the Federal Deposit
22 Insurance Corporation, the Federal Election Com-
23 mission, the Federal Labor Relations Authority, the
24 Federal Maritime Commission, the Federal Mine
25 Safety and Health Review Commission, the Federal

1 Trade Commission, the National Labor Relations
2 Board, the National Transportation Safety Board,
3 the Nuclear Regulatory Commission, the Occupa-
4 tional Safety and Health Review Commission, the
5 Office of Compliance, the Postal Regulatory Com-
6 mission, the Securities and Exchange Commission,
7 the Securities Investor Protection Corporation, the
8 Environmental Protection Agency, the Small Busi-
9 ness Administration, the Federal Housing Finance
10 Agency, and the Office of Government Ethics.

11 (d) INDEX.—Not later than 2 years after the date
12 of enactment of this Act—

13 (1) the Attorney General shall establish a pub-
14 lically accessible index of each criminal statutory of-
15 fense listed in the report required under subsection
16 (b) and make the index available and freely acces-
17 sible on the website of the Department of Justice;
18 and

19 (2) the head of each agency described in sub-
20 section (c)(2) shall establish a publically accessible
21 index of each criminal regulatory offense listed in
22 the report required under subsection (c)(1) and
23 make the index available and freely accessible on the
24 website of the agency.

1 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion shall be construed to require or authorize appropria-
3 tions.