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II

119TH CONGRESS
2D SESSION

S. 3959

To focus limited Federal resources on the most serious offenders.

IN THE SENATE OF THE UNITED STATES

MARCH 2, 2026

Mr. DURBIN (for himself, Mr. LEE, Mr. BOOKER, Mr. SCHATZ, Mr. KING, Mr. KAINE, Ms. WARREN, Mr. MARKEY, Mr. BLUMENTHAL, Mr. SANDERS, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To focus limited Federal resources on the most serious offenders.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Smarter Sentencing Act of 2026''.

SEC. 2. SENTENCING MODIFICATIONS FOR CERTAIN DRUG OFFENSES.

(a) CONTROLLED SUBSTANCES ACT.—The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended—

(1) in section 102 (21 U.S.C. 802), by adding at the end the following:

''(61) The term 'courier' means a defendant whose role in the offense was limited to transporting or storing drugs or money.''; and

(2) in section 401(b)(1) (21 U.S.C. 841(b)(1))—

(A) in subparagraph (A), in the flush text following clause (viii)—

(i) by striking ''10 years or more'' and inserting ''5 years or more''; and

(ii) by striking ''15 years'' and inserting ''10 years''; and

(B) in subparagraph (B), in the flush text following clause (viii)—

(i) by striking ''5 years'' and inserting ''2 years''; and

(ii) by striking ''not be less than 10 years'' and inserting ''not be less than 5 years''.

(b) CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.—Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

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

(A) by inserting ", other than a person who is a courier," after "such violation";

(B) by striking "person commits" and inserting "person, other than a courier, commits"; and

(C) by inserting "If a person who is a courier commits such a violation, the person shall be sentenced to a term of imprisonment of not less than 5 years and not more than life. If a person who is a courier commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, the person shall be sentenced to a term of imprisonment of not less than 10 years and not more than life." before "Notwithstanding section 3583"; and

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

(A) by inserting ", other than a person who is a courier," after "such violation";

(B) by striking "person commits" and inserting "person, other than a courier, commits"; and

(C) by inserting "If a person who is a courier commits such a violation, the person shall

be sentenced to a term of imprisonment of not less than 2 years and not more than life. If a person who is a courier commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, the person shall be sentenced to a term of imprisonment of not less than 5 years and not more than life.'' before ''Notwithstanding section 3583''.

(c) APPLICABILITY TO PENDING AND PAST CASES.—

(1) DEFINITION.—In this subsection, the term ''covered offense'' means a violation of a Federal criminal statute, the statutory penalties for which were modified by this section.

(2) PENDING CASES.—This section, and the amendments made by this section, shall apply to any sentence imposed after the date of enactment of this Act, regardless of when the offense was committed.

(3) PAST CASES.—In the case of a defendant who, before the date of enactment of this Act, was convicted or sentenced for a covered offense, the sentencing court may, on motion of the defendant, the Bureau of Prisons, the attorney for the Government, or on its own motion, impose a reduced sentence

after considering the factors set forth in section 3553(a) of title 18, United States Code.

SEC. 3. DIRECTIVE TO THE SENTENCING COMMISSION.

(a) DIRECTIVE TO SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, if appropriate, its guidelines and its policy statements applicable to persons convicted of an offense under section 401 of the Controlled Substances Act (21 U.S.C. 841) or section 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960) to ensure that the guidelines and policy statements are consistent with the amendments made by section 2 of this Act.

(b) CONSIDERATIONS.—In carrying out this section, the United States Sentencing Commission shall consider—

(1) the mandate of the United States Sentencing Commission, under section 994(g) of title 28, United States Code, to formulate the sentencing guidelines in such a way as to ''minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons'';

(2) the findings and conclusions of the United States Sentencing Commission in its October 2011

report to Congress entitled, Mandatory Minimum Penalties in the Federal Criminal Justice System;

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

(4) the relevant public safety concerns involved in the considerations before the United States Sentencing Commission;

(5) the intent of Congress that penalties for violent, repeat, and serious drug traffickers who present public safety risks remain appropriately severe; and

(6) the need to reduce and prevent racial disparities in Federal sentencing.

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

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

(2) pursuant to the emergency authority provided under paragraph (1), make such conforming amendments to the Federal sentencing guidelines as the Commission determines necessary to achieve consistency with other guideline provisions and applicable law.

SEC. 4. REPORT BY ATTORNEY GENERAL.

Not later than 6 months after the date of enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report outlining how the reduced expenditures on Federal corrections and the cost savings resulting from this Act will be used to help reduce overcrowding in the Federal Bureau of Prisons, help increase proper investment in law enforcement and crime prevention, and help reduce criminal recidivism, thereby increasing the effectiveness of Federal criminal justice spending.

SEC. 5. REPORT ON FEDERAL CRIMINAL OFFENSES.

(a) DEFINITIONS.—In this section—

(1) the term ''criminal regulatory offense'' means a Federal regulation that is enforceable by a criminal penalty; and

(2) the term ''criminal statutory offense'' means a criminal offense under a Federal statute.

(b) REPORT ON CRIMINAL STATUTORY OFFENSES.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report, which shall include—

(1) a list of all criminal statutory offenses, including a list of the elements for each criminal statutory offense; and

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

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

(B) the number of prosecutions for the criminal statutory offense brought by the Department of Justice each year for the 15-year period preceding the date of enactment of this Act; and

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

(c) REPORT ON CRIMINAL REGULATORY OFFENSES.—

(1) REPORTS.—Not later than 1 year after the date of enactment of this Act, the head of each Federal agency described in paragraph (2) shall submit

to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report, which shall include—

(A) a list of all criminal regulatory offenses enforceable by the agency; and

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

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

(ii) the number of violations of the criminal regulatory offense referred to the Department of Justice for prosecution in each of the years during the 15-year period preceding the date of enactment of this Act; and

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

(2) AGENCIES DESCRIBED.—The Federal agencies described in this paragraph are the Department of Agriculture, the Department of Commerce, the Department of Education, the Department of Energy, the Department of Health and Human Services, the Department of Homeland Security, the Department of Housing and Urban Development, the Department of the Interior, the Department of

Labor, the Department of Transportation, the Department of the Treasury, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Equal Employment Opportunity Commission, the Export-Import Bank of the United States, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Mine Safety and Health Review Commission, the Federal Trade Commission, the National Labor Relations Board, the National Transportation Safety Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Office of Congressional Workplace Rights, the Postal Regulatory Commission, the Securities and Exchange Commission, the Securities Investor Protection Corporation, the Environmental Protection Agency, the Small Business Administration, the Federal Housing Finance Agency, and the Office of Government Ethics.

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

(1) the Attorney General shall establish a publicly accessible index of each criminal statutory offense listed in the report required under subsection (b) and make the index available and freely accessible on the website of the Department of Justice; and

(2) the head of each agency described in subsection (c)(2) shall establish a publicly accessible index of each criminal regulatory offense listed in the report required under subsection (c)(1) and make the index available and freely accessible on the website of the agency.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require or authorize appropriations.

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