



DUE PROCESS

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Support the Bipartisan Smarter Sentencing Act, S. 1013

Passed in December 2018, the First Step Act was a recognition that Congress had previously gone too far with mandatory minimum sentences, particularly for nonviolent drug defendants. Bipartisan bicameral legislation already introduced in the 117th Congress—the EQUAL Act and the Prohibiting Punishment of Acquitted Conduct Act—are reminders that there is still much work to be done to continue reforming our federal sentencing laws.

A [2014 report](#) published by the National Research Council of the National Academies on the growth of incarceration in the United States called into question the effectiveness of mandatory minimum sentences. “[T]he evidence,” the report noted, “is insufficient to justify the conclusion that these harsher punishments yield measurable public safety benefits.” The report also explained the problems with the reliance on incarceration, driven by mandatory minimum sentences, that effectively warehouse nonviolent offenders for long periods: “The rise in incarceration rates marked a massive expansion of the role of the justice system in the nation’s poorest communities. Many of those entering prison come from and will return to these communities. When they return, their lives often continue to be characterized by violence, joblessness, substance abuse, family breakdown, and neighborhood disadvantage.” In short, lawmakers’ reliance on mandatory minimum sentences isn’t helping communities, it’s hurting them.

Introduced by Sens. Dick Durbin (D-IL) and Mike Lee (R-UT), the Smarter Sentencing Act, S. 1013, would reduce mandatory minimums for low-level, nonviolent drug defendants and allow judges to consider retroactivity—the latter of which is important new language that has not appeared in previous iterations of the legislation.

The bipartisan Smarter Sentencing Act has been introduced in each Congress since the 114th Congress. The bill was marked up by the Senate Judiciary Committee in January 2014 and received bipartisan support. Some provisions of previous iterations were included in Title IV of the First Step Act, which was signed into law in December.

The Smarter Sentencing Act of 2021 continues the First Step Act’s progress made on sentencing reform by reducing mandatory minimums for low-level drug couriers. Currently, low-level couriers are subject to mandatory sentences of 5 years, 10 years, 15 years, and 20 years depending on the quantities of the substance. The Smarter Sentencing Act would reduce these mandatory sentences to 2 years, 5 years, 10 years, and 15 years. Importantly, the bill also allows judges to consider retroactivity on a case-by-case basis upon a petition from the defendant, Bureau of Prisons, or a prosecutor.

In addition to the reforms made to certain mandatory minimum sentences, the bipartisan Smarter Sentencing Act requires the Attorney General to complete a report on how the savings from these changes will be used to reduce federal prison overcrowding and also mandates certain information be provided to help Congress determine the extent of federal overcriminalization.

Due Process Institute urges senators to co-sponsor and support the bipartisan Smarter Sentencing Act to continue the progress already made in reforming federal drug sentences. It’s time for smarter sentencing.

Due Process Institute is a bipartisan nonprofit that works to honor, preserve, and restore principles of fairness in the criminal legal system. If you have any questions or concerns, please contact Director, Rule of Law Initiatives, Jason Pye at jason@idueprocess.org.