

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1596

To provide for application of the sentencing guidelines for certain nonviolent offenses in which a mandatory minimum term of imprisonment would otherwise be required.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 27 (legislative day, OCTOBER 13), 1993

Mr. SIMON (for himself, Mr. THURMOND, Mr. KENNEDY, Mr. SIMPSON, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide for application of the sentencing guidelines for certain nonviolent offenses in which a mandatory minimum term of imprisonment would otherwise be required.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Sentencing Improve-  
5       ment Act of 1993”.

1 **SEC. 2. FLEXIBILITY IN APPLICATION OF MANDATORY MIN-**  
2 **IMUM SENTENCE PROVISIONS IN CERTAIN**  
3 **CIRCUMSTANCES.**

4 (a) AMENDMENT OF TITLE 18, UNITED STATES  
5 CODE.—Section 3553 of title 18, United States Code, is  
6 amended by adding at the end the following new sub-  
7 section:

8 “(f) EXCEPTION TO CERTAIN STATUTORY MINIMUM  
9 SENTENCING PROVISIONS.—

10 “(1) SENTENCING UNDER THIS SECTION.—In  
11 the case of an offense described in paragraph (2),  
12 the court shall, notwithstanding the requirement of  
13 a mandatory minimum sentence, impose a sentence  
14 in accordance with this section and the sentencing  
15 guidelines and any pertinent policy statement issued  
16 by the United States Sentencing Commission.

17 “(2) OFFENSES.—An offense is described in  
18 this paragraph if—

19 “(A) the defendant is subject to a manda-  
20 tory minimum term of imprisonment for violat-  
21 ing, attempting to violate, or conspiring to vio-  
22 late section 401 or 404 of the Controlled Sub-  
23 stances Act (21 U.S.C. 841 and 844) or section  
24 1010 of the Controlled Substances Import and  
25 Export Act (21 U.S.C. 960);

1           “(B) the defendant does not have more  
2 than 1 criminal history point under the sentenc-  
3 ing guidelines;

4           “(C) the defendant did not cause, attempt  
5 to cause, or credibly threaten to cause the death  
6 of, or serious bodily injury to, any person dur-  
7 ing the course of the offense;

8           “(D) the defendant did not carry or other-  
9 wise possess a firearm or explosive during the  
10 course of the offense and did not direct another  
11 person to do so;

12           “(E) the defendant was not an organizer,  
13 leader, manager, or supervisor of others (as de-  
14 termined under the sentencing guidelines) in  
15 the offense; and

16           “(F) the offense did not result in death or  
17 serious bodily injury as a result of—

18                   “(i) the use of the controlled sub-  
19 stance; or

20                   “(ii) the act of any person which was  
21 reasonably foreseeable and for which the  
22 defendant is legally accountable.”.

23       (b) CONFORMING AMENDMENTS.—(1) Section  
24 401(b) of the Controlled Substances Act (21 U.S.C.  
25 841(b)) is amended by inserting “or section 3553(f) of

1 title 18, United States Code,” after “420 of this title”  
2 the first time it appears.

3 (2) Section 404(a) of the Controlled Substances Act  
4 (21 U.S.C. 844(a)) is amended by striking the penultimate  
5 sentence and inserting the following: “A mandatory mini-  
6 mum sentence required by this section shall not apply in  
7 the case of a person subject to section 3553(f) of title 18,  
8 United States Code.”.

9 (3) Section 1010(a) of the Controlled Substances Im-  
10 port and Export Act (21 U.S.C. 960(a)) is amended by  
11 inserting “, except as provided in section 3553(f) of title  
12 18, United States Code” before the period.

13 (4) Section 411(a) of the Controlled Substances Act  
14 (21 U.S.C. 851(a)) is amended by adding at the end there-  
15 of the following new paragraph:

16 “(3) This section shall not apply to any determination  
17 of a defendant’s criminal history under the sentencing  
18 guidelines, including any determination of criminal history  
19 that, under section 3553(f) of title 18, United States  
20 Code, disqualifies the defendant from consideration for a  
21 sentence below an otherwise applicable mandatory mini-  
22 mum.”.

23 (c) HARMONIZATION.—The United States Sentencing  
24 Commission—

1           (1) may make such amendments as it deems  
2 necessary and appropriate to harmonize the sentenc-  
3 ing guidelines and policy statements with section  
4 3553(f) of title 18, United States Code, as added by  
5 subsection (a), and promulgate policy statements to  
6 assist the courts in interpreting that provision;

7           (2) shall review the consideration of defendants'  
8 criminal histories under the guidelines and make  
9 such amendments to the sentencing guidelines and  
10 policy statements as the Commission determines nec-  
11 essary and appropriate to ensure that—

12                 (A) defendants with significant criminal  
13 histories resulting from foreign convictions are  
14 sentenced commensurate with the seriousness of  
15 their prior criminal records to the extent that  
16 consideration of such foreign convictions is con-  
17 stitutional and practical;

18                 (B) defendants with juvenile adjudications  
19 involving significant acts of misconduct are sen-  
20 tenced commensurate with the seriousness of  
21 such misconduct to the extent that consider-  
22 ation of such misconduct is practical and rel-  
23 evant to the purposes of sentencing; and

24                 (C) the assignment to a defendant of a sin-  
25 gle criminal history point adequately reflects

1 the seriousness of such a defendant's prior  
2 criminal conduct; and

3 (3) may promulgate any such amendments  
4 under the procedures set forth in section 21(a) of  
5 the Sentencing Act of 1987 (Public Law 100-182;  
6 101 Stat. 1271), as though the authority under that  
7 section had not expired.

8 (d) SENTENCING COMMISSION STUDY.—The United  
9 States Sentencing Commission shall monitor the operation  
10 of this Act and the amendments made by this Act and,  
11 not later than 18 months following the date of enactment  
12 of this Act, provide a report to Congress describing—

13 (1) sentences imposed under the Act;

14 (2) the findings pursuant to the review man-  
15 dated by subsection (c)(2); and

16 (3) any recommendations for changes in the  
17 Act that the Commission believes are warranted.

18 (e) EFFECTIVE DATE.—The amendments made by  
19 subsections (a) and (b) and any amendments to the sen-  
20 tencing guidelines and policy statements made by the  
21 United States Sentencing Commission pursuant to sub-  
22 section (c) shall apply with respect to sentences imposed  
23 for offenses committed on or after the date of enactment  
24 of this Act.

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