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S. 2146

To enable incarcerated persons to petition a Federal court for a second look at sentences longer than 10 years, where the person is not a danger to the safety of any person or the community, and has shown they are ready for reentry, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 17, 2019

Mr. BOOKER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To enable incarcerated persons to petition a Federal court for a second look at sentences longer than 10 years, where the person is not a danger to the safety of any person or the community, and has shown they are ready for reentry, and for other purposes.

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 “Second Look Act of
5 2019”.

1 **SEC. 2. FINDINGS.**

2 (a) FINDINGS RELATED TO THE UNITED STATES
3 CRIMINAL JUSTICE SYSTEM.—Congress finds the fol-
4 lowing:

5 (1) Although the United States has less than 5
6 percent of the world’s population, the United States
7 holds approximately 21 percent of the world’s pris-
8 oners and leads the world in the number of individ-
9 uals incarcerated, with nearly 2,200,000 people in-
10 carcerated in State and Federal prisons and local
11 jails.

12 (2) The prison population of the United States
13 has increased by 500 percent over a 40-year period
14 preceding the date of enactment of this Act.

15 (3) The United States incarcerates citizens of
16 the United States at 5 to 10 times the rate of other
17 industrialized nations.

18 (4) The face of incarceration in the United
19 States is not exclusively male. Although only 5 per-
20 cent of the women in the world live in the United
21 States, the United States houses 30 percent of the
22 world’s incarcerated women.

23 (5) The growth of the incarceration of women
24 in the United States has outpaced that of men by
25 nearly 2-to-1, growing nearly 800 percent between
26 1978 and 2014. Eighty percent of incarcerated

1 women are mothers and most are the primary care-
2 takers for their children.

3 (6) The overall prison population of the United
4 States in 2017 declined by 7.3 percent since reach-
5 ing a peak level in 2009, but at the current rate of
6 decline it would take until 2091 (72 years) to cut
7 the prison population in the United States in half.

8 (7) Nearly half of the United States Federal
9 prison population in 2017 was incarcerated for a
10 drug trafficking offense.

11 (b) FINDINGS RELATED TO THE NEED FOR A SEC-
12 OND LOOK.—Congress finds the following:

13 (1) Congress finds that a second look at the
14 sentences for incarcerated individuals is needed.

15 (2) Life sentences of imprisonment and long
16 sentences without the possibility of review violate
17 human rights standards.

18 (3) One out of 9 incarcerated individuals is cur-
19 rently serving a life sentence, nearly one-third of
20 whom are sentenced to life without parole. One out
21 of every 15 women in prison, nearly 7,000 women,
22 is serving a life or virtual life sentence.

23 (4) In 2016, 161,957 people were serving a life
24 sentence and 53,290 people were serving life without
25 parole in the United States, compared to a total of

1 50 people serving a life sentence without the possi-
2 bility of release in the United Kingdom.

3 (5) Mandatory minimum penalties continue to
4 result in long sentences in the Federal system, as of
5 2016—

6 (A) 55.7 percent of the Federal prison
7 population had been sentenced under a manda-
8 tory minimum provision;

9 (B) the average sentence length for indi-
10 viduals who were convicted of an offense car-
11 rying a mandatory minimum penalty was 110
12 months of imprisonment; and

13 (C) more than two-thirds of Federal pris-
14 oners serving life or virtual life sentences have
15 been convicted of nonviolent crimes, including
16 30 percent for a drug crime.

17 (6) Among those individuals serving life without
18 parole sentences, 49.1 percent have been convicted
19 of a drug related crime.

20 (7) The United States has much more punitive
21 sentencing laws than the rest of the world, as—

22 (A) sentence lengths in most European
23 countries rarely exceed 20 years;

1 (B) Norway abolished life sentences in
2 1981 and under Norwegian law, the maximum
3 prison term is 21 years;

4 (C) in Denmark and Sweden, individuals
5 serving life sentences can be released after 12
6 years and 18 years of imprisonment, respec-
7 tively; and

8 (D) in Latin America, only 6 out of 19
9 countries maintain statutes that allow life im-
10 prisonment.

11 (8) With the abolition of parole under the Sen-
12 tencing Reform Act of 1984 (Public Law 98–473;
13 98 Stat. 1987), there are extremely limited options
14 for review of Federal sentences, which differs greatly
15 from the rest of the world, as—

16 (A) Belgium requires a parole review of life
17 sentences after 10 years;

18 (B) Germany requires a parole review of
19 life sentences after 15 years; and

20 (C) the International Criminal Court re-
21 quires a parole review of life sentences after 25
22 years.

23 (9) An incarcerated individual should not be
24 precluded from receiving a second look review of

1 their sentence because of “the nature of the crime”
2 for which the individual was convicted, as—

3 (A) individuals age out of crime starting
4 around 25 years of age;

5 (B) released individuals over the age of 50
6 have a very low recidivism rate;

7 (C) several studies, State policies and pro-
8 grams, and the National Institute of Correc-
9 tions of the Bureau of Prisons, consider incar-
10 celerated individuals aged 50 and above to be el-
11 derly;

12 (D) incarcerated people age at an acceler-
13 ated rate because they are more likely than the
14 general public to experience stresses including
15 long histories of alcohol and drug misuse, insuf-
16 ficient diet, lack of medical care, financial
17 struggles, and stress of maintaining safety
18 while behind bars;

19 (E) the Office of Inspector General of the
20 Department of Justice has found that “aging
21 inmates commit less misconduct while incarcer-
22 ated and have a lower rate of re-arrest once re-
23 leased,” and has recommended the early release
24 of aging inmates to help manage the inmate

1 population and reduce costs at the Bureau of
2 Prisons;

3 (F) the cost to State taxpayers to incar-
4 cerate “the approximately 250,000 individuals
5 aged 50 or older currently behind bars” is
6 about \$16,000,000,000 each year;

7 (G) incarceration of individuals beyond the
8 age during which the individuals are likely to
9 commit crime is a drain on taxpayer dollars
10 that does nothing to increase public safety;

11 (H) individuals are capable of redemption;
12 and

13 (I) in the words of Bryan Stevenson, “each
14 of us is more than the worst thing we’ve ever
15 done”.

16 **SEC. 3. MODIFICATION OF CERTAIN TERMS OF IMPRISON-**
17 **MENT.**

18 (a) IN GENERAL.—Subchapter C of chapter 229 of
19 title 18, United States Code, is amended by inserting after
20 section 3626 the following:

21 **“SEC. 3627. MODIFICATION OF CERTAIN TERMS OF IMPRIS-**
22 **ONMENT.**

23 “(a) IN GENERAL.—Notwithstanding any other pro-
24 vision of law, a court may reduce a term of imprisonment
25 imposed upon a defendant if—

1 “(1) the imposed term of imprisonment was
2 more than 10 years;

3 “(2) the defendant has served not less than 10
4 years in custody for the offense; and

5 “(3) the court finds, after considering the fac-
6 tors set forth in subsection (c), that—

7 “(A) the defendant—

8 “(i) is not a danger to the safety of
9 any person or the community; and

10 “(ii) demonstrates readiness for re-
11 entry; and

12 “(B) the interests of justice warrant a sen-
13 tence modification.

14 “(b) SUPERVISED RELEASE.—

15 “(1) IN GENERAL.—Any defendant whose sen-
16 tence is reduced pursuant to subsection (a), shall be
17 ordered to serve—

18 “(A) the term of supervised release in-
19 cluded as part of the original sentence imposed
20 on the defendant; or

21 “(B) in the case of a defendant whose
22 original sentence did not include a term of su-
23 pervised release, a term of supervised release
24 not to exceed the authorized terms of super-
25 vised release described in section 3583.

1 “(2) CONDITIONS OF SUPERVISED RELEASE.—

2 The conditions of supervised release and any modi-
3 fication or revocation of the term of supervised re-
4 lease shall be in accordance with section 3583.

5 “(c) FACTORS AND INFORMATION TO BE CONSID-
6 ERED IN DETERMINING WHETHER TO MODIFY A TERM
7 OF IMPRISONMENT.—

8 “(1) IN GENERAL.—The court, in determining
9 whether to reduce a term of imprisonment pursuant
10 to subsection (a)—

11 “(A) may consider the factors described in
12 section 3553(a), including the nature of the of-
13 fense and the history and characteristics of the
14 defendant; and

15 “(B) shall consider—

16 “(i) the age of the defendant at the
17 time of the offense;

18 “(ii) the age of the defendant at the
19 time of the sentence modification petition
20 and relevant data regarding the decline in
21 criminality as the age of defendants in-
22 crease;

23 “(iii) any presentation of argument
24 and evidence by counsel for the defendant;

1 “(iv) a report and recommendation of
2 the Bureau of Prisons, including informa-
3 tion on whether the defendant has substan-
4 tially complied with the rules of each insti-
5 tution in which the defendant has been
6 confined and whether the defendant has
7 completed any educational, vocational, or
8 other prison program, where available;

9 “(v) any report and recommendation
10 of the United States attorney for any dis-
11 trict in which an offense for which the de-
12 fendant is imprisoned was prosecuted;

13 “(vi) whether the defendant has dem-
14 onstrated maturity, rehabilitation, and a
15 fitness to reenter society sufficient to jus-
16 tify a sentence reduction;

17 “(vii) any statement, which may be
18 presented orally or otherwise, by any vic-
19 tim of an offense for which the defendant
20 is imprisoned or by a family member of the
21 victim if the victim is deceased;

22 “(viii) any report from a physical,
23 mental, or psychiatric examination of the
24 defendant conducted by a licensed health
25 care professional;

1 “(ix) the family and community cir-
2 cumstances of the defendant, including any
3 history of abuse, trauma, or involvement in
4 the child welfare system, and the potential
5 benefits to children and family members of
6 reunification with the defendant;

7 “(x) the role of the defendant in the
8 offense and whether, and to what extent,
9 an adult was involved in the offense if the
10 defendant was a juvenile at the time of the
11 offense;

12 “(xi) the diminished culpability of ju-
13 veniles as compared to that of adults, and
14 the hallmark features of youth, including
15 immaturity, impetuosity, and failure to ap-
16 preciate risks and consequences, if the de-
17 fendant was a juvenile at the time of the
18 offense; and

19 “(xii) any other information the court
20 determines relevant to the decision of the
21 court.

22 “(2) REBUTTABLE PRESUMPTION.—In the case
23 of a defendant who is 50 years of age or older on
24 the date on which the defendant files an application
25 for a sentence reduction under subsection (a), there

1 shall be a rebuttable presumption that the defendant
2 shall be released.

3 “(d) LIMITATION ON APPLICATIONS PURSUANT TO
4 THIS SECTION.—

5 “(1) SECOND APPLICATION.—Not earlier than
6 5 years after the date on which an order denying re-
7 lease on an initial application under this section be-
8 comes final, a court shall entertain a second applica-
9 tion by the same defendant under this section.

10 “(2) THIRD APPLICATION.—Not earlier than 2
11 years after the date on which an order entered by
12 a court on a second application under paragraph (1)
13 becomes final, a court shall entertain a third appli-
14 cation by the same defendant under this section.

15 “(3) FINAL APPLICATION.—A court shall enter-
16 tain a final application if the defendant—

17 “(A) is 50 years of age or older; and

18 “(B) has exhausted the sentencing modi-
19 fication process.

20 “(e) PROCEDURES.—

21 “(1) NOTICE.—Not later than 30 days after the
22 date on which the 10th year of imprisonment begins
23 for a defendant sentenced to more than 10 years of
24 imprisonment for an offense, the Bureau of Prisons
25 shall provide written notice of this section to—

1 “(A) the defendant; and

2 “(B) the sentencing court, the United
3 States attorney, and the Federal Public De-
4 fender or Executive Director of the Community
5 Defender Organization for the judicial district
6 in which the sentence described in this para-
7 graph was imposed.

8 “(2) APPLICATION.—

9 “(A) IN GENERAL.—An application for a
10 sentence reduction under this section shall be
11 filed in the judicial district in which the sen-
12 tence was imposed as a motion to reduce the
13 sentence of the defendant pursuant to this sec-
14 tion and may include affidavits or other written
15 material.

16 “(B) REQUIREMENT.—A motion to reduce
17 a sentence under this section shall be filed with
18 the sentencing court and a copy shall be served
19 on the United States attorney for the judicial
20 district in which the sentence was imposed.

21 “(3) EXPANDING THE RECORD; HEARING.—

22 “(A) EXPANDING THE RECORD.—After the
23 filing of a motion to reduce a sentence under
24 this section, the court may direct the parties to

1 expand the record by submitting additional
2 written materials relating to the motion.

3 “(B) HEARING.—

4 “(i) IN GENERAL.—The court shall,
5 upon request of the defendant or the Gov-
6 ernment, conduct a hearing on the motion,
7 at which the defendant and counsel for the
8 defendant shall be given the opportunity to
9 be heard.

10 “(ii) EVIDENCE.—In a hearing under
11 this section, the court shall allow parties to
12 present evidence.

13 “(iii) DEFENDANT’S PRESENCE.—At
14 a hearing under this section, the defendant
15 shall be present unless the defendant
16 waives the right to be present. The re-
17 quirement under this clause may be satis-
18 fied by the defendant appearing by video
19 teleconference.

20 “(iv) COUNSEL.—A defendant who is
21 unable to afford counsel is entitled to have
22 counsel appointed, at no cost to the de-
23 fendant, to represent the defendant for the
24 application and proceedings under this sec-
25 tion, including any appeal, unless the de-

1 defendant expressly waives the right to coun-
2 sel after being fully advised of their rights
3 by the court.

4 “(v) FINDINGS.—The court shall state
5 in open court, and file in writing, the rea-
6 sons for granting or denying a motion
7 under this section.

8 “(C) APPEAL.—The Government or the
9 defendant may file a notice of appeal in the dis-
10 trict court for review of a final order under this
11 section. The time limit for filing such appeal
12 shall be governed by rule 4(a) of the Federal
13 Rules of Appellate Procedure.

14 “(4) CRIME VICTIMS RIGHTS.—Upon receiving
15 an application under paragraph (2), the United
16 States attorney shall provide any notifications re-
17 quired under section 3771.

18 “(f) ANNUAL REPORT.—

19 “(1) IN GENERAL.—Not later than 1 year after
20 the date of enactment of the Second Look Act of
21 2019, and once every year thereafter, the United
22 States Sentencing Commission shall submit to the
23 Committee on the Judiciary of the Senate and the
24 Committee on the Judiciary of the House of Rep-

1 representatives a report on requests for sentence reduc-
2 tions under this section.

3 “(2) CONTENTS.—Each report required to be
4 published under paragraph (1) shall include, for the
5 1-year period preceding the report—

6 “(A) the number of—

7 “(i) incarcerated individuals who were
8 granted a sentence reduction under this
9 section; and

10 “(ii) incarcerated individuals who
11 were denied a sentence reduction under
12 this section;

13 “(B) the number of incarcerated individ-
14 uals released from prison under this section;

15 “(C) the demographic characteristics, in-
16 cluding race and gender, of—

17 “(i) the incarcerated individuals who
18 applied for a sentenced reduction under
19 this section;

20 “(ii) the incarcerated individuals who
21 were granted a sentence reduction under
22 this section; and

23 “(iii) the incarcerated individuals who
24 were released under this section;

1 “(D) the location, categorized by Federal
2 circuit and State, of—

3 “(i) the incarcerated individuals who
4 applied for a reduction under this section;

5 “(ii) the incarcerated individuals who
6 were granted a reduction under this sec-
7 tion; and

8 “(iii) the incarcerated individuals who
9 were released under this section;

10 “(E) the average sentence reduction grant-
11 ed under this section;

12 “(F) the number of incarcerated individ-
13 uals 50 years of age or older who applied for
14 a sentence reduction under this section;

15 “(G) the number of incarcerated individ-
16 uals who are 50 years of age or older who were
17 granted a sentence reduction under this section;
18 and

19 “(H) the number of incarcerated individ-
20 uals 50 years of age or older who were released
21 from prison under this section.

22 “(3) ATTORNEY GENERAL COOPERATION.—The
23 Attorney General shall—

24 “(A) assist and provide information to the
25 United States Sentencing Commission in the

1 performance of the duties of the Commission
2 under this subsection; and

3 “(B) promptly respond to requests from
4 the Commission.”.

5 (b) TABLE OF SECTIONS.—The table of sections for
6 subchapter C of chapter 229 of title 18, United States
7 Code, is amended by inserting after the item relating to
8 section 3626 the following:

“3627. Modification of certain terms of imprisonment.”.

9 (c) TECHNICAL AND CONFORMING AMENDMENT.—
10 Section 3582(c) of title 18, United States Code, is amend-
11 ed—

12 (1) in paragraph (1)(B), by striking “and” at
13 the end;

14 (2) in paragraph (2), by striking the period at
15 the end and inserting “; and”; and

16 (3) by adding at the end the following:

17 “(3) the court may reduce a term of imprison-
18 ment in accordance with section 3627.”.

19 (d) APPLICABILITY.—The amendments made by this
20 section shall apply to any conviction entered before, on,
21 or after the date of enactment of this Act.

○