CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

September 11, 2014

S. 1410
Smarter Sentencing Act of 2014

As ordered reported by the Senate Committee on the Judiciary on January 30, 2014

SUMMARY

S. 1410 would amend federal law to reduce prison sentences for certain drug offenses. Based on information provided by the Department of Justice (DOJ), CBO estimates that implementing the legislation would reduce the cost of incarcerating offenders and would lead to a reduction in DOJ spending of $4 billion over the 2015-2024 period, assuming total future appropriations are reduced consistent with the projected reduction in prison population under S. 1410.

CBO estimates that enacting S. 1410 would result in about 250,000 prisoners being released from federal prisons earlier than they would under current law over the 2015-2024 period. CBO expects that many of those individuals also would receive certain federal benefits sooner than they otherwise would be eligible to receive them. Consequently, CBO estimates that enacting the legislation would increase direct spending by about $1 billion and would reduce revenues by $42 million over the 2015-2024 period. Pay-as-you-go procedures apply to this legislation because it would affect direct spending and revenues.

S. 1410 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary effects of S. 1410 are shown in the following table. The costs of this legislation fall within budget functions 550 (health), 570 (Medicare), 600 (income security), 650 (Social Security), and 750 (administration of justice).

TABLE 1. SUMMARY OF BUDGETARY EFFECTS OF S. 1410

	By Fiscal Year, in Millions of Dollars											
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2015-2019	2015-2024
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Authorization Level	-32	-38	-66	-151	-239	-376	-860	-657	-1,117	-827	-525	-4,361
Estimated Outlays	-33	-37	-66	-151	-239	-376	-545	-762	-907	-967	-525	-4,081
CHANGES IN DIRECT SPENDING												
Total Outlay Changes	9	11	17	42	69	106	144	184	207	211	149	1,002
On-Budget	8	9	14	36	60	91	124	159	179	183	128	865
Off-Budget	1	2	3	6	9	15	20	25	28	28	21	137
CHANGES IN REVENUES												
Estimated Revenues	0	0	-1	-2	-3	-4	-6	-8	-9	-9	-6	-42
On-Budget	0	0	-1	-2	-3	-4	-6	-8	-9	-9	-6	-42
Off-Budget	0	0	0	0	0	0	0	0	0	0	0	0
NET INCREASE IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES												
Change in the Deficit	9	12	18	44	72	111	150	192	216	220	155	1,044
On-Budget	8	10	15	38	63	96	130	167	188	192	134	907
Off-Budget	1	2	3	6	9	15	20	25	28	28	21	137

Sources: Congressional Budget Office and staff of the Joint Committee on Taxation.

Note: This estimate assumes total appropriations are reduced consistent with CBO's estimate of lower funding needs for the administration of justice.

BASIS OF ESTIMATE

For this estimate, CBO assumes that S. 1410 will be enacted near the end of 2014 and that future appropriations will be provided consistent with the reductions in prison sentencing requirements specified in the bill.

The operation of federal prisons is funded through annual appropriation acts. CBO's baseline projection of future spending for federal prisons is estimated by assuming that the amount provided for the prisons in the 2014 appropriation law will be provided in future years, adjusted to reflect anticipated inflation. (This is the same procedure we use to project all components of discretionary spending, although our baseline projection of total discretionary spending also incorporates the caps on funding in current law.) CBO does not have a projection of the growth in prison population, workforce, or infrastructure. Those figures will depend on future funding levels and numerous administrative decisions including how to deploy federal investigative and prosecutorial resources. To prepare this cost estimate of the potential effect of S. 1410 on future discretionary spending, CBO assumed that under current law the number of individuals receiving sentences for offenses that would be reduced by the legislation would remain at roughly the levels observed in recent years.

TABLE 2. DETAILED CHANGES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 1410

	By Fiscal Year, in Millions of Dollars											
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2015-2019	2015-2024
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Reduced Mandatory Minimum Sentences												
Estimated Budget Authority	0	0	-28	-114	-205	-330	-450	-577	-652	-672	-346	-3,027
Estimated Outlays	0	0	-28	-114	-205	-330	-450	-577	-652	-672	-346	-3,027
FSA Retroactivity												
Estimated Budget Authority	-34	-37	-36	-33	-29	-25	-20	-14	-7	-2	-169	-237
Estimated Outlays	-34	-37	-36	-33	-29	-25	-20	-14	-7	-2	-169	-237
Expanding the Safety Valve												
Estimated Budget Authority	-1	-1	-2	-4	-5	-6	-6	-7	-7	-8	-12	-46
Estimated Outlays	-1	-1	-2	-4	-5	-6	-6	-7	-7	-8	-12	-46
Reduced Staffing and Construction Costs												
Estimated Budget Authority	0	0	0	0	0	-15	-384	-60	-450	-145	0	-1,054
Estimated Outlays	0	0	0	0	0	-15	-69	-165	-240	-285	0	-774
Other Provisions												
Estimated Budget Authority	3	0	0	0	0	0	0	0	0	0	3	3
Estimated Outlays	2	1	0	0	0	0	0	0	0	0	3	3
Total Changes												
Estimated Authorization Level	-32	-38	-66	-151	-239	-376	-860	-657	-1,117	-827	-525	-4,361
Estimated Outlays	-33	-37	-66	-151	-239	-376	-545	-762	-907	-967	-525	-4,081

Note: FSA = Fair Sentencing Act of 2010.

Changes in Spending Subject to Appropriation

CBO estimates that implementing S. 1410 would reduce prison costs by about $4 billion over the 2015-2024 period. Those savings would stem primarily from lower costs for prisoners' medical expenses and food as well as prison utilities. After 2019, CBO estimates that costs for prison construction and staffing also would decline.

Currently, the federal government spends $6.7 billion annually to manage a prison population totaling more than 200,000 federal inmates (that figure includes expenditures for new construction, staffing, and daily operating expenses). Spending on federal prison operations was about $5.6 billion in 2008. Operating costs have increased because of rising per capita costs, as well as a 2 percent average annual increase in the prison population over the last decade.

CBO estimates that S. 1410 would reduce the prison population compared to current law. Such a reduction would have long-term effects on the cost of operating the prison system and would reduce the need for the construction of new prisons and increased staffing levels for existing prisons. CBO expects that the magnitude of cost savings under the bill after 2019 could vary widely from our estimate and would depend significantly on policy choices made with regard to cutting the budget for the construction of new facilities and reducing staff levels at existing prisons relative to what they would be under current law.

Reduced Mandatory Minimum Sentences. S. 1410 would reduce the mandatory minimum sentences from five years to two years for certain drug offenses including possessing, manufacturing, or importing 100 grams of a mixture containing heroin or 500 grams of a mixture containing cocaine, from 10 years to five years for offenses including possessing, manufacturing, or importing one kilogram of a mixture containing heroin or five kilograms of a mixture containing cocaine, and from 20 years to 10 years for similar offenses that also involved serious bodily injury or death. Based on information from DOJ, CBO expects that implementing those provisions would reduce the prison population by about 28,000 person-years over the 2015-2019 period. (A person-year measures the incarceration of one person for a full year.) Based on DOJ's costs for one person-year of incarceration, we estimate that this provision would reduce costs by $346 million over the next five years. Most of those savings would result from provisions of the bill that would reduce certain sentences from five years to two years.

Reducing mandatory minimum sentences from 20 years to 10 years and from 10 years to five years would not begin to yield savings until after the fifth year of the bill's enactment. (Cost savings from reducing mandatory minimum sentences would not be realized until the end of an inmate's sentence under the legislation.) CBO estimates that annual cost savings from the reduction of mandatory minimum sentences would reach $672 million by 2024 and total about $3 billion over the 2015-2024 period.

Fair Sentencing Act Retroactivity. The Congress enacted the Fair Sentencing Act of 2010 (FSA) to raise the threshold for drug possession that triggers a mandatory minimum sentence for persons convicted after the law's enactment. S. 1410 would make provisions of FSA (as amended by this bill) retroactive to cover about 8,800 current inmates who were sentenced prior to enactment of FSA. Based on information provided by DOJ, CBO estimates that making amended provisions of FSA retroactive would reduce the prison population by about 14,000 person-years over the 2015-2019 period, which we estimate could reduce DOJ's costs by $169 million over the next five years. Cost reductions from retroactively applying FSA would decline after 2019 as the number of affected inmates would diminish in future years. We estimate the 10-year savings from implementing this provision would total $237 million.

Expanding the Safety Valve. Under current law, persons convicted of drug-trafficking offenses may receive sentences below the statutory mandatory minimum if they have only one prior federal sentence of less than 60 days (which would give them one criminal history point[1]) and meet other requirements. This exception to the minimum sentence is known as the safety valve. S. 1410 would expand the prison population eligible for the safety valve to include inmates with two criminal history points; that expansion would allow reduced sentences to apply to a person with a prior federal sentence of less than 13 months, with certain restrictions. Based on information provided by DOJ, CBO estimates that the expansion of the safety valve would reduce the prison population over the 2015-2024 period by about 3,500 person-years. CBO estimates that implementing this expansion of the safety valve would reduce costs by $46 million over the 2015-2024 period.

Reduced Staffing and Construction Costs. CBO does not expect that S. 1410 would lead to a significant decrease in prison construction costs over the 2015-2019 period because of the current level of overcrowding in federal prisons. The federal prison population currently exceeds the rated capacity of prison facilities by 36 percent and has grown at an average annual rate of about 2 percent over the last decade. Based on DOJ's projections of the prison population, under the bill, that population would decrease, but we estimate it would remain about 25 percent above the rated capacity in 2019 and about 8 percent above the rated capacity in 2024. Construction of a new prison currently costs around $350 million. CBO assumes that over the 2020-2024 period, implementing S. 1410 would postpone the construction of two new prison facilities and that spending on prison construction would be reduced by $420 million over the 2020-2024 period.

In addition, as the prison population decreases, the rate of hiring new staff for the corrections system would slow down. The rate of hiring new staff under the bill would depend on DOJ's decisions about the desired ratio of inmates to staff. If DOJ hires staff to maintain the existing ratio of inmates to staff, then cost reductions under the bill would be realized sooner as fewer staff are hired to maintain a smaller prison population. If DOJ allows the ratio of inmates to staff to decrease as the prison population decreases under the bill, little or no cost reductions would be realized. CBO expects that, because of the current level of prison overcrowding, DOJ would hire at the same rate as under current law until 2019 to allow the ratio of inmates to staff to decrease. However, we expect the hiring rate for prison staff would slow down after 2019 under the bill. CBO estimates that the reduction in hiring would reduce spending by $354 million over the 2015-2024 period.

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1. Criminal history points are a tool used to determine the length of a defendant's prison sentence. Under the U.S. Federal Sentencing Guidelines, the permissible length for a defendant's prison sentence depends on the defendant's prior criminal history combined with the level of the current offense.

Other Provisions. The bill would establish new requirements for DOJ to report to the Congress on the prosecution of criminal offenses and would require the United States Sentencing Commission to review and update sentencing guidelines to ensure they are consistent with S. 1410. CBO estimates that implementing those provisions would cost $3 million over the 2015-2019 period.

The bill also would establish mandatory minimum sentences for certain criminal offenses related to sexual assault, domestic violence, and terrorism. Based on information provided by DOJ, CBO estimates that establishing those mandatory minimum sentences would not significantly affect the size of the prison population because those provisions would affect relatively few offenders and would not significantly increase their prison sentences.

Changes in Direct Spending and Revenues

The prison population is currently ineligible to receive certain federal benefits, including health benefits through Medicare, Medicaid, and health insurance exchanges; Social Security; Supplemental Security Income (SSI); and benefits through the Supplemental Nutrition Assistance Program (SNAP). By accelerating the release of prisoners, CBO estimates that the bill would increase the number of people receiving benefits through those programs over the next 10 years.

Medicaid. Based on research regarding the post-incarceration income of felons relative to the federal poverty level, CBO estimates that 20 percent of the prisoners released under the bill would obtain Medicaid benefits. Medicaid outlays would increase by $361 million over the 2015-2024 period. Approximately three-quarters of those outlays would be associated with services provided to former felons who would qualify for benefits under the expansion in eligibility established by the Affordable Care Act.

Exchange Subsidies. Based on research on the age, employment status, and post-incarceration income of felons, CBO and staff of the Joint Committee on Taxation (JCT) estimate that 28 percent of the prisoners released under the bill would obtain insurance through a health insurance exchange. Accordingly, CBO and JCT estimate that the bill would increase premium assistance tax credits and cost-sharing subsidies provided through health insurance exchanges by $227 million over the 2015-2024 period. That increase in subsidies reflects a $185 million increase in outlays and a $42 million decrease in revenues.[2]

2. The subsidies for health insurance premiums are structured as refundable tax credits; following the usual procedures for such credits, CBO and JCT classify the portions that exceed taxpayers' income tax liabilities as outlays, and the portions that reduce tax payments as reductions in revenues. Cost-sharing subsidies are all classified as outlays.

TABLE 3. DETAILED CHANGES IN DIRECT SPENDING OUTLAYS AND REVENUES UNDER S. 1410

	By Fiscal Year, in Millions of Dollars											
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2015-2019	2015-2024
CHANGES IN DIRECT SPENDING OUTLAYS												
Medicaid	3	3	6	16	25	38	51	66	75	78	53	361
Exchange Subsidies	1	2	3	7	12	18	26	34	40	42	25	185
Social Security (Off-Budget)	1	2	3	6	9	15	20	25	28	28	21	137
Medicare	1	1	1	4	6	9	13	16	18	18	13	87
Supplemental Security Income	2	2	3	7	12	18	23	31	32	30	26	160
Supplemental Nutrition Assistance Program	1	1	1	3	5	8	11	13	15	15	11	73
Total Changes in Outlays	9	11	17	42	69	106	144	184	207	211	149	1,002
On-Budget	8	9	14	36	60	91	124	159	179	183	128	865
Off-Budget	1	2	3	6	9	15	20	25	28	28	21	137
CHANGES IN REVENUES												
Estimated Revenues	0	0	-1	-2	-3	-4	-6	-8	-9	-9	-6	-42
On-Budget	0	0	-1	-2	-3	-4	-6	-8	-9	-9	-6	-42
Off-Budget	0	0	0	0	0	0	0	0	0	0	0	0

Sources: Congressional Budget Office and staff of the Joint Committee on Taxation.

Social Security and Medicare. Using data from the Social Security Administration on the number of beneficiaries suspended due to incarceration, CBO estimates that fewer than 4 percent of the prisoners released under the bill would receive Social Security benefits, primarily through the Social Security Disability Insurance program. CBO estimates that enacting S. 1410 would increase Social Security spending by $137 million over the 2015-2024 period. Most of the beneficiaries in this group would also become entitled to Medicare benefits, at an estimated cost of $87 million over the 2015-2024 period.

Supplemental Security Income. Using data from the Social Security Administration on SSI beneficiaries whose benefits were suspended while they were incarcerated, CBO estimates that 8 percent of prisoners released under the bill would receive SSI benefits, at an estimated cost of $160 million over the 2015-2024 period.

Supplemental Nutrition Assistance Program. Based on research on the post-incarceration income of felons, CBO estimates that 17 percent of the prisoners released under the bill would receive SNAP benefits, at an estimated cost of $73 million over the 2015-2024 period. This estimate accounts for the fact that several states have taken the option under current law to ban drug felons from receiving SNAP benefits.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table. Only on-budget changes to outlays or revenues are subject to pay-as-you-go procedures.

CBO Estimate of Pay-As-You-Go Effects for S. 1410, as ordered reported by the Senate Committee on the Judiciary on January 30, 2014

	By Fiscal Year, in Millions of Dollars												
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2014-2019	2014-2024
NET INCREASE IN THE ON-BUDGET DEFICIT													
Statutory Pay-As-You-Go Impact	0	8	10	15	38	63	96	130	167	188	192	134	907
Memorandum:													
Changes in Outlays	0	8	9	14	36	60	91	124	159	179	183	128	865
Changes in Revenues	0	0	0	-1	-2	-3	-4	-6	-8	-9	-9	-6	-42

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 1410 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would increase the number of individuals eligible for Medicaid assistance. Since state governments pay for a portion of Medicaid, CBO estimates that state spending on the program would increase by about $240 million over the 2015-2024 period. Because states have significant flexibility to alter their programmatic responsibilities for Medicaid, those costs would not result from an intergovernmental mandate.

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