CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

May 18, 2016

H.R. 3713
Sentencing Reform Act of 2015

As ordered reported by the House Committee on the Judiciary on November 18, 2015

SUMMARY

H.R. 3713 would amend federal law to change the prison sentences associated with certain offenses. Based on information provided by the Department of Justice (DOJ) and the U.S. Sentencing Commission (USSC), CBO estimates that implementing the legislation would reduce the cost of incarcerating offenders and would lead to a reduction in discretionary costs to DOJ of $338 million over the 2017-2021 period and $769 million over the 2017-2026 period, assuming future appropriation actions consistent with the projected reduction in prison population.

CBO estimates that enacting H.R. 3713 would result in the release of thousands of prisoners from federal prisons earlier than would occur under current law. CBO expects that upon release many of those individuals would receive federal benefits from a variety of federal programs including Medicare, Medicaid, and health insurance marketplaces; Social Security; Supplemental Security Income (SSI); and the Supplemental Nutrition Assistance Program (SNAP). As a result, CBO and staff of the Joint Committee on Taxation (JCT) estimate that enacting the legislation would increase direct spending by $259 million and reduce revenues by $8 million over the 2017-2026 period. Pay-as-you-go procedures apply to this legislation because it would affect direct spending and revenues.

CBO estimates that enacting H.R. 3713 would not increase net direct spending or on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2027.

H.R. 3713 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 H.R. 3713 are shown in Table 1. The spending effects 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 H.R. 3713

	By Fiscal Year, in Millions of Dollars											
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017-2021	2017-2026
DECREASES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Budget Authority	-33	-49	-70	-85	-101	-82	-83	-87	-88	-91	-338	-769
Estimated Outlays	-33	-49	-70	-85	-101	-82	-83	-87	-88	-91	-338	-769
INCREASES IN DIRECT SPENDING												
Estimated Outlays [a]	9	13	21	28	34	28	28	30	33	34	105	258
On-Budget	7	11	18	25	29	25	25	26	29	29	90	224
Off-Budget	2	2	3	3	5	3	3	4	4	5	15	34
DECREASES IN REVENUES												
Estimated Revenues (on-budget)	0	0	-1	-1	-1	-1	-1	-1	-1	-1	-3	-8
INCREASE IN DEFICITS FROM CHANGES IN DIRECT SPENDING AND REVENUES												
Change in Deficits	9	13	22	29	35	29	29	31	34	35	108	266
On-Budget	7	11	19	26	30	26	26	27	30	30	93	232
Off-Budget	2	2	3	3	5	3	3	4	4	5	15	34

Notes: Components may not sum to totals because of rounding.

a. Budget authority is equal to outlays.

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 3713 will be enacted near the end of 2016 and that future appropriations will be reduced consistent with the anticipated reductions in prison population stemming from modified sentencing requirements specified in the bill.

The USSC guidelines differentiate the seriousness of offenses into 43 levels—the more serious the crime, the higher the offense level and the higher the potential sentence for conviction. On July 18, 2014, the USSC voted unanimously to apply Amendment 728. That amendment, sometimes referred to as “Drugs Minus Two,” adjusted sentencing guidelines to lower the sentencing levels for certain drug-related offenses. That amendment took effect on November 1, 2015, and because it was applied retroactively, it provides for the early release of thousands of inmates. The "Drugs Minus Two" amendment will affect all drug sentencing, including sentences that would be affected under H.R. 3713.

H.R. 3713 would amend current law to further reduce prison sentences for certain offenses. The legislation would change the manner in which sentences for particular crimes are calculated and determined. As a result, in qualifying cases, the sentencing court would be required to use the new guidelines provided by this legislation when calculating an appropriate sentence.

Under the bill, some provisions could be applied retroactively. The new calculations would be applied to both new cases (lowering potential initial sentences) and to old ones (recalculating sentences in cases that would qualify for reconsideration). In cases where a provision could be applied retroactively, an inmate may petition the court for a new sentence that would follow the adjusted sentencing guidelines. The resulting sentence could make an existing inmate eligible for immediate or early release. Because the changes in sentencing calculations would result in the early release of many existing inmates and shorten sentences for those newly convicted, CBO expects that implementing the bill would reduce the number of individuals in federal prisons relative to current law.

By reducing the population of individuals in federal prisons, CBO expects that H.R. 3713 would reduce DOJ's discretionary costs to operate the federal prison systems, which are subject to appropriation. We also expect the legislation would increase mandatory spending for entitlement programs. Individuals released earlier than they would be under current law could be eligible for different entitlement programs, such as Medicare, Medicaid, and Social Security, if they meet the criteria for those programs. (Generally, prisoners are not eligible for entitlement programs while they are incarcerated.)

CBO expects that under current law the number of individuals receiving sentences for offenses that would be affected by the legislation would remain at roughly the levels observed in recent years. The potential shift in the length of mandatory minimum sentences may have an affect on the behavior of prosecutors in those types of cases going forward but CBO cannot quantify those effects.

Costs and savings under the bill were calculated using "person-years," which were derived from the number of inmates estimated to be eligible for release in each year. When a person is released from prison early, the prison space that would have been occupied by that inmate (and its associated costs) would be "reduced" in that year and all other years that they otherwise would have been incarcerated. The average cost to BOP per person-year changes with inflation, but is estimated to average about $13,000 over the 2017-2026 period. The budgetary effects of the various provisions of the bill would depend on the pace at which inmates would be released during that period.

Changes in Spending Subject to Appropriation

CBO estimates that implementing H.R. 3713 would reduce prison costs by $338 million over the 2017-2021 period and $769 million over the next 10 years (see Table 2). Those savings would stem primarily from reduced spending for prisoners' medical expenses and food as well as for utility expenses.

TABLE 2. CHANGES IN DISCRETIONARY SPENDING UNDER H.R. 3713

	By Fiscal Year, in Millions of Dollars											
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017-2021	2017-2026
DECREASES IN SPENDING SUBJECT TO APPROPRIATION												
Fair Sentencing Retroactivity												
Estimated Authorization Level	-25	-34	-43	-50	-57	-34	-29	-26	-23	-22	-209	-343
Estimated Outlays	-25	-34	-43	-50	-57	-34	-29	-26	-23	-22	-209	-343
Safety Valves												
Estimated Authorization Level	-3	-7	-16	-20	-24	-27	-30	-33	-36	-37	-70	-233
Estimated Outlays	-3	-7	-16	-20	-24	-27	-30	-33	-36	-37	-70	-233
Statutory Sentencing for Possession of a Firearm												
Estimated Authorization Level	-3	-5	-7	-10	-14	-14	-15	-17	-17	-18	-39	-120
Estimated Outlays	-3	-5	-7	-10	-14	-14	-15	-17	-17	-18	-39	-120
Mandatory Minimums for Prior Drug Offenses												
Estimated Authorization Level	-1	-2	-3	-4	-5	-6	-8	-10	-11	-13	-15	-63
Estimated Outlays	-1	-2	-3	-4	-5	-6	-8	-10	-11	-13	-15	-63
Mandatory Minimums for Firearms Offenses												
Estimated Authorization Level	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-5	-10
Estimated Outlays	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-5	-10
Total Changes												
Estimated Authorization Level	-33	-49	-70	-85	-101	-82	-83	-87	-88	-91	-338	-769
Estimated Outlays	-33	-49	-70	-85	-101	-82	-83	-87	-88	-91	-338	-769

CBO estimates that H.R. 3713 would reduce the prison population relative to current law, which would reduce costs for operating the prison system. However, CBO does not expect there would be any savings from reductions in staffing because the federal prison population currently exceeds its capacity. As the prison population decreases, the rate of hiring new staff for the corrections system could slow depending on DOJ's decisions about the desired ratio of inmates to staff. If DOJ elected to maintain the existing ratio of inmates to staff, then cost reductions under the bill would be greater as fewer staff would be needed to oversee a smaller prison population. If DOJ kept current staff levels constant, little or no reductions in staff costs would be realized. Based on information from DOJ, CBO expects that, because of the current level of prison overcrowding and the number of person-years saved by the legislation, DOJ would choose to maintain current staffing levels.

Fair Sentencing Act Retroactivity. The Fair Sentencing Act of 2010 (FSA) reduced the statutory penalties for offenses involving possession of crack cocaine. H.R. 3713 would make provisions of FSA (as amended by this bill) retroactive. Based on information provided by the USSC, CBO estimates that making the amended provisions of FSA retroactive would reduce the number of prisoners by about 17,000 person-years over the 2017-2021 period, which CBO estimates would reduce DOJ's costs by $209 million over that period. The reductions in prison costs from retroactively applying FSA would grow more slowly after 2021 as the number of affected inmates would diminish in future years. CBO estimates that implementing this provision would reduce DOJ's costs by $343 million over the 2017-2026 period.

Safety Valves. Under current law, persons convicted of drug-trafficking offenses may receive sentences below the mandatory minimum if they have only one prior federal sentence of less than 60 days (which would give them one criminal history point) and meet other requirements.[1] This exception to the minimum sentence is known as the "safety valve." H.R. 3713 would expand the prison population eligible for the safety valve to include inmates with four criminal history points as long each conviction carries only one point. That expansion would allow reduced sentences to apply to persons with up to four convictions that resulted in less than 60 days of total sentence, with certain restrictions. Additionally, the bill would create a second safety valve that would allow mandatory minimum sentences of 10 years to be shortened if the defendant meets specified criteria.

Based on information provided by DOJ, CBO estimates that the expansion and creation of safety valves would reduce the number of prisoners over the 2017-2021 period by about 5,400 person-years and by 17,000 person-years over the 2017-2026 period and would reduce DOJ's costs by $70 million over the 2017-2021 period and $233 million over the 2017-2026 period.

Statutory Sentencing for Possession of a Firearm. H.R. 3713 would increase the maximum sentence for the unlawful possession of a firearm by a convicted felon, and certain other offenders, from 10 years to 15 years. Simultaneously it would reduce the enhanced mandatory minimum for armed career criminals from 15 years to 10 years. Prospectively, based on information from the USSC, CBO does not anticipate there would be any savings to the prison system from that provision over the 2017-2021 period. However, this provision could be applied retroactively, pending approval by a court.

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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 seriousness of the current offense.

Based on information provided by the USSC on court approved reductions in sentences, CBO estimates that the retroactive effects of the provision would result in savings of 3,100 person-years over the 2017-2021 period. CBO estimates that implementing this provision would reduce costs by $39 million over the 2017-2021 period and $120 million over the 2017-2026 period.

Mandatory Minimums for Prior Drug Offenses. H.R. 3713 would reduce mandatory minimum sentences for prior drug felons. The "three-strikes" penalty would be reduced from life imprisonment to 25 years and 20-year minimum sentences would be reduced to 15 years.[2] This section would also establish a mandatory prison term for a defendant who commits a drug offense involving a detectable amount of heroin containing fentanyl.

Under current law a mandatory minimum sentence can apply to any repeat drug offense, whether the felony is serious or minor. The bill would change the criteria for the application of a mandatory minimum sentence to include only serious drug felonies and serious violent felonies.[3] Those felonies are federal or state-level crimes for which the maximum sentence is 10 years or more. Including convictions for possession of heroin containing fentanyl and prior state-level crimes along with federal, among those that may result in a mandatory minimum sentence for qualifying drug offenders would increase the number of person-years served and mitigates savings under this provision of the legislation. CBO decreased person-year savings by 25 percent to reflect an increase in prison sentences because of this provision.

According to information from the USSC, savings for newly sentenced inmates under the lowered mandatory minimum would begin 15 years after sentencing, thus CBO estimates no savings over the next 10 years.

This provision may be used to retroactively reduce sentences. Based on information provided by the USSC, CBO estimates that such reductions would result in a decrease of 1,100 person-years over the 2017-2021 period, reducing costs by $15 million over the 2017-2021 period and $63 million over the 2017-2026 period.

Mandatory Minimums for Firearms Offenses. The bill would limit mandatory minimum sentences for offenses involving the use of a firearm in the commission of a drug-related or violent crime to offenders who have previously been convicted and have

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2. The "three strikes" penalty significantly increases the prison sentence of persons who have two or more prior convictions and in some cases carries a mandatory life sentence.

3. A serious drug felony is a federal offense involving a controlled substance for which the maximum term of imprisonment is ten years or more, as defined in titles 18, 21, and 46 of the U.S. Code. A serious violent felony is a federal offense consisting of murder, manslaughter, sexual abuse, use of a firearm, or other severe offense for which the maximum term of imprisonment is 10 years or more, as defined in section 3559 of title 18 of the U.S. Code.

served a sentence for such an offense. The bill also would reduce that mandatory minimum from 25 years to 15 years. However, the bill would expand the list of offenses that may lead to a mandatory minimum sentence to include similar prior state-level convictions in which the offender carried, brandished, or used a firearm. This provision may be applied retroactively, but only after a court considers sentencing factors, including any danger the inmate may pose to society should they be released and whether or not they have engaged in misconduct during their time in prison.

Based on information provided by the USSC, CBO estimates that the retroactive effects of this provision would result in a decrease of 350 person-years over the 2017-2021 period. The inclusion of similar state-level convictions among those that may result in a mandatory minimum sentence would increase the number of person-years served thereby partially offsetting those estimated reductions. CBO estimates that implementing this provision would reduce costs by $5 million over the 2017-2021 period and $10 million over the 2017-2026 period.

Other Costs. H.R. 3713 would impose costs on the Judiciary. As inmates were released from prison earlier than they would be under current law, a greater number of probation officers would be required to supervise them, thereby increasing costs. The bill also would increase the workload of judges and court officers as new requests for changes in sentencing are considered by the court and inmates are processed for earlier release. According to information from the Administrative Office of the United States Courts, the bill would increase costs to the Judiciary by less than $500,000 a year over the 2017-2021 period.

Changes in Direct Spending and Revenues

Under current law prisoners are generally ineligible to receive benefits from certain federal programs, including Medicare, Medicaid, and health insurance marketplaces; Social Security; SSI; and SNAP. By accelerating the release of prisoners, CBO estimates that the bill would increase the number of people receiving benefits from those programs, resulting in an increase in direct spending totaling $258 million over the 2017-2026 period (see Table 3).

Medicaid. Based on research regarding the post-incarceration income of felons, CBO estimates that about half of the prisoners released under this bill would have incomes below 138 percent of the federal poverty line, the upper income eligibility threshold for adults made newly eligible for Medicaid under the Affordable Care Act (ACA). Of those who would qualify for Medicaid, about half would be eligible under pre-ACA eligibility categories and qualify for the standard federal Medicaid matching rates (which average 57 percent nationally), and the other half would be eligible for the new eligibility category under the ACA and qualify for federal matching rates that begin at 100 percent in 2016 and phasedown to 90 percent by 2020. CBO also expects that health care costs for former prisoners would be about 25 percent higher than for the average Medicaid beneficiary stemming from mental healthcare needs and substance abuse issues. CBO estimates that Medicaid spending for those former prisoners would total $80 million over the 2017-2026 period.

TABLE 3. CHANGES IN DIRECT SPENDING UNDER H.R. 3713

	By Fiscal Year, in Millions of Dollars											
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017-2021	2017-2026
INCREASES IN DIRECT SPENDING [a]												
Medicaid	3	4	6	8	10	8	9	10	11	11	31	80
Exchange Subsidies	1	3	4	6	7	6	6	6	7	7	21	53
Social Security (off-budget)	2	2	3	3	5	3	3	4	4	5	15	34
Medicare	1	1	2	3	3	3	3	3	3	3	10	25
Supplemental Security Income	2	2	4	5	6	5	4	4	5	5	19	42
Supplemental Nutrition Assistance Program	0	1	2	3	3	3	3	3	3	3	9	24
Total Changes in Outlays	9	13	21	28	34	28	28	30	33	34	105	258
On-budget	7	11	18	25	29	25	25	26	29	29	90	224
Off-budget	2	2	3	3	5	3	3	4	4	5	15	34
DECREASES IN REVENUES												
Estimated Revenues	0	0	-1	-1	-1	-1	-1	-1	-1	-1	-3	-8

Notes: Components may not sum to totals because of rounding.

a. Budget authority is equal to outlays for all programs.

Health Insurance Marketplaces. Based on research on the age, employment status, and post-incarceration income of felons, CBO and JCT estimate that about one-quarter of the prisoners released under the bill would obtain subsidized insurance through a health insurance marketplace. Accordingly, CBO and JCT estimate that the bill would increase premium assistance tax credits and cost-sharing subsidies provided through health insurance marketplaces by $62 million over the 2017-2026 period. That increase in subsidies reflects a $53 million increase in outlays and a $8 million decrease in revenues.[4]

Social Security and Medicare. Based on administrative data from the Social Security Administration, CBO estimates that about 4 percent of prisoners would receive Social Security benefits if they were not incarcerated. CBO applied that share to the estimated

4. 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.

reduction in prisoners and estimates that enacting H.R. 3713 would increase Social Security spending by $34 million over the 2017-2026 period (that spending would be classified as off-budget). Most prisoners who would gain eligibility for Social Security under this proposal also would gain eligibility for Medicare benefits, at an estimated cost of $25 million over the 2017-2026 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 10 percent of prisoners released under the bill would receive SSI benefits, at an estimated cost of $42 million over the 2017-2026 period.

Supplemental Nutrition Assistance Program. Based on research on the post-incarceration income of felons, CBO estimates that almost one-quarter of the prisoners released under the bill would receive SNAP benefits, at an estimated cost of $24 million over the 2017-2026 period. This estimate accounts for the fact that most states have taken the option under current law to modify or opt out of the ban on 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 H.R. 3713, as ordered reported by the Senate Committee on the Judiciary on October 26, 2015

	By Fiscal Year, in Millions of Dollars												
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-2021	2016-2026
NET INCREASE IN THE ON-BUDGET DEFICIT													
Statutory Pay-As-You-Go Impact	0	7	11	19	26	30	26	26	27	30	30	93	232
Memorandum:													
Changes in Outlays	0	7	11	18	25	29	25	25	26	29	29	90	224
Changes in Revenues	0	0	0	-1	-1	-1	-1	-1	-1	-1	-1	-3	-8

INCREASE IN LONG-TERM DIRECT SPENDING AND DEFICITS:

CBO estimates that enacting H.R. 3713 would not increase net direct spending or on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2027.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 3713 contains no intergovernmental mandates as defined in UMRA.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 3713 contains no private-sector mandates as defined in UMRA.

PREVIOUS CBO ESTIMATE

On May 17, 2016, CBO transmitted a cost estimate for S. 2123, the Sentencing Reform and Corrections Act of 2015, as reported by the Senate Committee on the Judiciary on October 26, 2015. H.R. 3713 is similar to title 1 of S. 2123; however, H.R. 3713 would create new mandatory minimum sentences for possession of certain narcotics while S. 2123 would create new mandatory minimum sentences for different crimes. H.R. 3713 also does not include changes to programs that aim to reduce recidivism that are in the Senate bill. Differences in the estimated budgetary effects of the two bills reflect those differences in legislative language.

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