

119TH CONGRESS
1ST SESSION

S. _____

To prohibit the consideration of perceived gender identity in sentencing.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To prohibit the consideration of perceived gender identity
in sentencing.

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 “Fair Sentencing Act”.

5 **SEC. 2. PROHIBITING CONSIDERATION OF GENDER IDEN-**
6 **TITY IN SENTENCING.**

7 (a) UNITED STATES CODE.—

8 (1) IN GENERAL.—Section 3553 of title 18,
9 United States Code, is amended—

10 (A) in subsection (a)—

1 (i) by redesignating paragraphs (1)
2 through (7) as subparagraphs (A) through
3 (G) and adjusting the margins accordingly;
4 (ii) in the matter preceding paragraph
5 (1), by striking “The court shall” and in-
6 serting the following:

7 “(1) IN GENERAL.—The court shall”; and

8 (iii) by adding at the end the fol-
9 lowing:

10 “(2) PROHIBITED CONSIDERATIONS.—The
11 court shall not consider the perceived gender identity
12 of the defendant as a mitigating factor, directly rel-
13 evant to history or rehabilitation.”; and

14 (B) in subsection (g)—

15 (i) by striking “DEFINITION OF VIO-
16 LENT OFFENSE.—As used in this section,
17 the” and inserting the following: “DEFINI-
18 TIONS—In this section:

19 “(1) PERCEIVED GENDER IDENTITY.—The
20 term ‘perceived gender identity’ means the self-iden-
21 tified gender identity of an individual distinct from
22 biological sex.

23 “(2) VIOLENT OFFENSE.—The”.

24 (2) CONFORMING AMENDMENTS.—

1 (A) CYBER SECURITY ENHANCEMENT ACT
2 OF 2002.—Section 2207(b)(2)(F) of the Cyber
3 Security Enhancement Act of 2002 (6 U.S.C.
4 657(b)(2)(F)) is amended by striking “section
5 3553(a)(2)” and inserting “section
6 3553(a)(1)(B)”.

7 (B) TITLE 18.—Title 18 of the United
8 States Code is amended—

9 (i) in chapter 227—

10 (I) in section 3551, by striking
11 “section 3553(a)(2)” and inserting
12 “section 3553(a)(1)(B)”;

13 (II) in section 3563—

14 (aa) by striking “section
15 3553(a)(1) and (a)(2)” and in-
16 serting “section 3553(a)(1)(A)
17 and (B)”;

18 (bb) by striking “section
19 3553(a)(2)” and inserting “sec-
20 tion 3553(a)(1)(B)”;

21 (III) in section 3583, by striking
22 “section 3553(a)(1), (a)(2)(B),
23 (a)(2)(C), (a)(2)(D), (a)(4), (a)(5),
24 (a)(6), and (a)(7)” and inserting
25 “subparagraphs (A), (B)(ii), (B)(iii),

1 (B)(iv), (D), (E), (F), and (G) of sec-
2 tion 3553(a)(1)”; and

3 (ii) in section 3742—

4 (I) in subsection (e)(3)(B)(i), by
5 striking “section 3353(a)(2)” and in-
6 serting “section 3353(a)(1)(B)”;

7 (II) in subsection (g)(1), by
8 striking “subsection 3553(a)(4)” and
9 inserting “section 3553(a)(1)(D)”;
10 and

11 (III) in subsection (j)(A), by
12 striking “section 3353(a)(2)” and in-
13 serting “section 3353(a)(1)(B)”.

14 (C) TITLE 28.—Chapter 58 of title 28,
15 United States Code, is amended—

16 (i) in section 991, by striking “section
17 3353(a)(2)” each place the term appears
18 and inserting “section 3353(a)(1)(B)”;

19 (ii) in section 994, by striking “sec-
20 tion 3353(a)(2)” each place the term ap-
21 pears and inserting “section
22 3353(a)(1)(B)”.

23 (b) SENTENCING GUIDELINES.—Not later than 30
24 days after the date of enactment of this Act, the United
25 States Sentencing Commission shall amend the United

1 States Sentencing Commission Guidelines Manual to pro-
2 hibit the considerations described in section 3553(a)(2),
3 as added by subsection (a), pursuant to its authority
4 under section 994(p) of title 28, United States Code.