

Open Letter to Congress *“Time to Mend the ‘Crack’ in Justice”*

February 16, 2006

The Honorable Arlen Specter,
Chairman
The Honorable Patrick Leahy,
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable James Sensenbrenner, Jr.,
Chairman
The Honorable John Conyers, Jr.,
Ranking Member
Committee on the Judiciary
United States House of Representatives

Dear Senators and Representatives:

This year marks the twentieth anniversary of the passage of the law mandating disparate punishment for crack and powder cocaine offenders. In 1986 Congress enacted the Anti-Drug Abuse Act that differentiated between two forms of cocaine – powder and crack – and singled out crack cocaine for dramatically harsher punishment. In 1988 Congress further distinguished crack cocaine from both powder cocaine and every other drug by creating a mandatory felony penalty of five years in prison for simple possession of five grams of crack cocaine.

In what has come to be known as the 100:1 ratio, it takes 100 times more powder cocaine than crack cocaine to trigger the harsh five- and ten-year mandatory minimum sentences. This sentencing scheme has had an enormous racially discriminatory impact, largely because of federal law enforcement’s focus on inner city communities, resulting in blacks being disproportionately impacted by the facially neutral, yet unreasonably harsh, crack penalties.

In 1995 the bipartisan, independent U.S. Sentencing Commission transmitted to Congress recommendations that would equalize the penalties between crack and powder cocaine possession and distribution.¹ Although these recommendations were widely endorsed by a multitude of groups, including the American Bar Association, they were nevertheless rejected.² The Commission recently reported that revising this one sentencing rule would do more to reduce the sentencing gap between blacks and whites “than any other single policy change,” and would “dramatically improve the fairness of the federal sentencing system.”³

¹ 60 Fed. Reg. 25074, amend. No. 5 (proposed May 1, 1995).

² CONG. REC. H10255-56 (daily ed. Oct. 18, 1995), H. Res. 237, 104th Cong.; CONG. REC. S14645-56 (daily ed. Sept. 29, 1995), S. 1254, 104th Cong.

³ United States Sentencing Commission [USSC], *Fifteen Years of Guidelines Sentencing* (Nov. 2003), p. 132.

For twenty years the 100:1 ratio has punished low-level crack cocaine offenders, many with no previous criminal history, far more severely than their wholesale drug suppliers who provide the powdered cocaine from which crack is produced. Of all drug defendants, crack defendants are most likely to receive a sentence of imprisonment as well as the longest average period of incarceration. The Commission has reported that local street-level crack offenders receive average sentences comparable to intrastate and interstate powder cocaine dealers, and both intra- and interstate crack sellers receive average sentences longer than international powder cocaine traffickers.⁴ Despite the enormous cost to taxpayers and society, the crack-powder ratio has resulted in no appreciable impact on the cocaine trade. Results such as these are surely not what Congress intended to stem the tide of crack cocaine abuse.

We recognize that two decades ago, little was known about crack, other than vague perceptions that this new derivative form of cocaine was more dangerous than its original powder form, would significantly threaten public health, and greatly increase drug-related violence. Since that time, copious documentation and analysis by the U.S. Sentencing Commission have revealed that many assertions were not supported by sound data and, in retrospect, were exaggerated or simply incorrect.

The undersigned organizations agree with the expert Sentencing Commission's careful analysis that the present 100:1 quantity ratio is too great and results in penalties that sweep too broadly, apply too frequently to lower-level offenders, overstate the seriousness of the offenses, and produce insupportable racial disparity in sentencing. Justice necessitates that crack cocaine sentences have the same quantity triggers as those currently required for powder cocaine. Aligning crack cocaine sentences with current powder cocaine sentences is the sound way to eliminate this unfair disparity.⁵

The twentieth anniversary of statutory crack penalties is the perfect time to revisit and finally correct the gross unfairness that has been the legacy of the 100:1 ratio. We call for hearings without delay, and the enactment of legislation consistent with the Sentencing Commission's 1995 recommendation that equalizes the quantity triggers and places the focus of federal cocaine drug enforcement on major traffickers, where it should be. We strongly urge that you not let this anniversary pass without fixing this injustice.

Thank you for your prompt attention to our concerns.

Sincerely,

⁴ U.S. SENTENCING COMM'N, 104th CONG, 2nd SESS., SPECIAL REPORT TO CONGRESS: COCAINE AND FED. SENTENCING POL'Y (1995) at 175-77 (Figures 10 & 11).

⁵ Reducing the quantity threshold for powder cocaine to that of crack cocaine, is an option that was unanimously rejected by the Sentencing Commission in 2002 as likely to exacerbate, rather than ameliorate, the problems with cocaine sentencing. Such an approach would not cause a shift in focus from bit players to drug "kingpins," but would lead to dramatically increased levels of federal incarceration, further burdening the federal system at a great cost to taxpayers.

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