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Dear Representative,

For many years, Prison Fellowship has urged Congress to address the longstanding 100 to 1 sentencing disparity between crack and powder cocaine. Finally, a bipartisan compromise has been reached and reform legislation has passed the U.S. Senate. It now awaits your attention in the House of Representatives. The consensus legislation, the *Fair Sentencing Act of 2010*, would reduce the drug quantity disparity between powder cocaine and crack cocaine from the current level of 100:1 to 18:1. We support this legislation and ask that you move quickly to pass this bill on the suspension calendar.

Twenty four years have now passed since the law mandating widely different punishments for crack and powder cocaine offenses took effect. We now have over two decades of experience to analyze whether this focus of extreme penalties on crack has been effective in ridding our neighborhoods of the crack trade.

Sadly, it has not worked. The crack trade still thrives in our cities. But while the law hasn't had the intended result, it has had some unintended consequences that are troubling. The disparity in sentences between crack and powder has locked up many, many young men, particularly African American men, for prison sentences much longer than for those who sell similar amounts of other comparable drugs. It is time for Congress to concede that the crack/powder discrepancy has failed as a policy and has resulted in many injustices.

The Anti-Drug Abuse Act of 1986 singled out crack cocaine for significantly harsher penalties than powder cocaine. In 1988 Congress further enhanced the disparity between the two forms of cocaine by establishing a mandatory minimum federal penalty of five years in prison for possessing only five grams – the weight of one candy bar – of crack.

These laws created what has become known as the 100:1 ratio. It takes 100 times more powder cocaine than crack cocaine to trigger five and ten-year mandatory minimum sentences. And, this disparity continues to exist even though copious amounts of research show that crack cocaine is not more dangerous than powder cocaine.

Not only does the disparity defy scientific fact, but it also harms communities and drains law enforcement resources. The harsh penalties for crack powder have had an enormous, racially discriminatory impact on black communities. Over 80 percent of crack cocaine defendants are black. In November 2003, the United States Sentencing Commission said that revising crack sentencing laws would reduce the sentencing gap between blacks and whites more “than any

other single policy change,” and would “dramatically improve the fairness of the federal sentencing system.”¹

The harsh crack penalties have also fallen on low-level cocaine offenders, many with no previous criminal history, far more severely than their wholesale drug suppliers who provided the powdered cocaine from which crack is produced. Crack defendants are more likely than all other drug defendants to get a sentence of imprisonment. Today, people convicted of crack cocaine offenses, though considered to be local dealers, receive average prison sentences greater than international powder cocaine traffickers.

Despite the substantial cost to taxpayers and society, the crack-powder ratio has resulted in no real impact on the cocaine trade – and has diverted precious federal resources from stopping drug kingpins to chasing after low-level, local offenders. The truth is that crack cocaine dealers are at the lowest end of the cocaine distribution chain. These small dealers are easily replaced with other young people gullible enough to think they can get rich quickly dealing in crack.

In 2007, the Sentencing Commission submitted to Congress amendments to the federal sentencing guidelines that lowered by two levels the sentencing ranges for crack offenses. The changes took effect in November, and in December of the same year, the Commission voted to make the amendments retroactive. Pat Nolan of Justice Fellowship was privileged to testify before the Commission on the importance of retroactivity. To date, more than 15,000 crack cocaine offenders have had their cases reviewed and received a reduction in their sentence. Overall, the process has moved very smoothly, with no adverse effects on public safety.

Some people have said that changing the crack sentencing laws will make our communities more dangerous. But these results totally disproved this idea. In fact, we argue that *NOT* changing crack cocaine laws will endanger the public.

Let us explain why.

Our prisons are bursting at the seams. Overcrowded prisons contribute to a toxic environment that results in horrible violence, endangering both correctional officers and inmates. Our colleague Pat Nolan served on the Prison Rape Elimination Commission and the Commission on Safety and Abuse in America’s Prisons. In dozens of hearings around the country, corrections officials have told the Commission that prison crowding makes prison management almost impossible.

Former California Corrections Secretary Roderick Hickman told the Commission that the California Department of Corrections and Rehabilitation confines twice as many people as the

¹ United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing* (Nov. 2003), p. 132.

facilities were designed to house. He listed overcrowding as first among the significant factors contributing to violence.

The report of the Commission on Safety and Abuse found that, “The majority of prisons and many jails hold more people than they can deal with safely and effectively, creating a degree of disorder and tension almost certain to erupt into violence.” Reducing prison crowding was the Commission’s number one recommendation to curb prison violence, and retroactivity addresses that goal.

While the guidelines amendments were a huge step in the right direction, the mandatory minimum laws for crack cocaine remain in effect. Only Congress can change this unjust, unwise policy.

We urge you to support and enact the *Fair Sentencing Act of 2010* because our country needs a more rational approach to apprehending, prosecuting, and sentencing those who traffic in cocaine.

Sincerely,

A handwritten signature in blue ink that reads "Mark L. Earley". The signature is written in a cursive style with a long, sweeping underline.

Mark L. Earley
President, Prison Fellowship