

Only Congress can eliminate the 100-to-1 sentencing disparity between crack and powder cocaine.
Support S. 1789, the Fair Sentencing Act of 2009

For over 20 years the federal government has punished individuals convicted of possessing or selling small quantities of crack cocaine more harshly than defendants convicted of other drug offenses. In what has come to be known as the 100-to-1 ratio, it takes 100 times more powder cocaine than crack cocaine to trigger the same mandatory minimum penalty. A person who distributes, or simply possesses, just five grams of crack cocaine receives the same five-year sentence as someone who distributes 500 grams of powder cocaine.

What Does the Bill Do?

- Equalize the amount of crack and powder cocaine required to trigger mandatory minimums: 500 grams will require five years and 5 kilograms will require 10 years, no matter what form of cocaine is involved;
- Eliminate the five-year mandatory minimum for simple possession of crack cocaine;
- Call for increased penalties for drug offenses involving vulnerable victims, violence and other aggravating factors; and
- Require a report on the effectiveness of federally funded drug courts.

What Effect would the Bill Have?

• ***S. 1789 would save federal tax dollars and ease prison overcrowding.*** The Federal Bureau of Prisons estimates it costs \$25,895 a year to house each prisoner. According to the U.S. Sentencing Commission, eliminating the sentencing disparity between powder and crack cocaine would reduce the prison population by over 13,000 in 10 years.

• ***S. 1789 would improve Public Safety and Restore Federal Priorities.*** When Congress passed the Federal Anti-Drug Abuse Acts of 1986 and 1988, the intended targets of the law were “serious” and “major” traffickers. In practice, however, the very opposite has happened. Mandatory penalties for crack cocaine offenses have been applied most often to individuals who are low-level participants in the drug trade, who comprise more than 60 percent of federal crack defendants. These cases are more appropriately handled at the state and local, rather than federal, level.

The pursuit of low-level offenders diverts precious resources away from the most troublesome contributors to the illegal drug market – drug kingpins and importers – and distorts the traditional division of responsibility between state and federal government. S. 1789 refocuses federal resources on prosecution and punishment of drug kingpins and importers, those who bring large amounts of cocaine into the country and move it across state lines and does not eliminate federal prosecution.

• ***S. 1789 would eliminate Racial Disparities and Improving Faith in the Justice System.*** African Americans comprise 81.8% of the defendants sentenced to federal prison for crack cocaine offenses, yet only 18% of crack cocaine users are African American. The average sentence length for these crack cocaine prisoners is 122 months, 37 months longer than that for powder cocaine. These differences are due, in large part, to the crack cocaine mandatory minimum penalty. It is no surprise that such disparity contributes to a regrettable perception of race-based unfairness in our criminal justice system that at worst leads to jury nullification.

The Sentencing Commission has stated that “[r]evising the crack cocaine thresholds would better reduce the gap [in sentences between Black and Whites] than any other single policy change, and it would dramatically improve the fairness of the federal sentencing system.”