

The Fair Sentencing Act of 2009

Assistant Majority Leader Dick Durbin (D-IL) introduced the Fair Sentencing Act of 2009, a narrowly-tailored bill that would eliminate the sentencing disparity between crack and powder cocaine and increase penalties for the worst offenders. This would restore fairness to our drug sentencing policy and focus limited federal resources on violent drug traffickers.

Under current law, it takes 100 times more powder cocaine than crack cocaine to trigger the same mandatory minimum sentences. For example, simply possessing five grams of crack carries the same five-year mandatory minimum sentence as selling 500 grams of powder cocaine. This is known as the 100:1 crack-powder sentencing disparity.

The disparity stems from a 1986 law intended to address the crack epidemic, but as Vice President Joe Biden, one of the authors of the law, has said, “each of the myths upon which we based the disparity has since been dispelled or altered.” For example, studies have shown that there is little difference in the physiological impact of crack and powder cocaine, and that crack is not linked to significantly more violence than powder cocaine.

The Fair Sentencing Act would:

- Eliminate the crack-powder disparity and establish the same sentences for crack and powder cocaine (a 1:1 ratio);
- Eliminate the mandatory minimum sentence for simple possession of crack cocaine (the only mandatory minimum sentence for simple possession of a drug by a first-time offender); and
- Significantly increase penalties for drug offenses involving vulnerable victims, violence and other aggravating factors.

The crack-powder disparity disproportionately affects African Americans. While African Americans are less than 30 percent of crack users, they are 82 percent of those convicted of federal crack offenses. Law enforcement experts say that crack-powder disparity undermines trust in our criminal justice system, especially in minority communities. The bipartisan United States Sentencing Commission has said that fixing the crack-powder disparity “would dramatically improve the fairness of the federal sentencing system.”

The crack disparity diverts resources away from the prosecution of large scale drug traffickers. In fact, more than 60 percent of defendants convicted of federal crack crimes are street-level dealers or mules. During these difficult economic times, the crack-powder disparity also places an enormous burden on taxpayers. The U.S. Sentencing Commission estimates that eliminating the disparity would save more than \$510 million in prison beds over 15 years.

President Obama, Vice President Biden, Attorney General Holder, and a broad coalition of legal, law enforcement, civil rights, and religious groups support eliminating the crack-powder disparity, including, for example, the American Bar Association, the Leadership Conference on Civil Rights, Los Angeles Police Chief William Bratton, Miami Police Chief John Timoney, the National Black Police Association, and the United Methodist Church.

Other original cosponsors of the Fair Sentencing Act are Senator Pat Leahy (D-VT), the Chairman of the Judiciary Committee; Senator Arlen Specter (D-PA), the Chairman of the Crime and Drugs Subcommittee; and Senators Russ Feingold (D-WI), Ben Cardin (D-MD), Sheldon Whitehouse (D-RI), Ted Kaufman (D-DE), Al Franken (D-MN), Chris Dodd (D-CT), and John Kerry (D-MA).