

Analysis of Senator Hatch's Crack Cocaine Bill (S. 1685) Fairness in Drug Sentencing Act of 2007

Section 2: Powder and Crack Cocaine Sentencing Disparity Reduction

- Increases the amount of cocaine base needed to trigger a mandatory minimum sentence for offenses involving manufacture, distribution, or possession (21 USC § 841); or importation and exportation (21 USC § 960)
 - 10 years: From 50 grams to 250 grams
 - 5 years: From 5 grams to 25 grams

Section 3: Change in Penalty for Possession of Crack Cocaine

- Amends 21 USC § 844 (a) by omitting the specific provisions for cocaine base possession and effectively treating cocaine base possession penalties under this subsection the same as penalties for other controlled substances, as long as the cocaine base charges are not subject to mandatory minimum sentences.
 - The penalty changes from a sentence of 5 to 20 years and a minimum fine of \$1,000 for the possession of 5 grams or more of cocaine base for a first offense to a sentence of no more than 1 year and a minimum fine of \$1,000
 - The penalty changes from a sentence of 5 to 20 years and a minimum fine of \$1,000 for the possession of 3 grams or more of cocaine base if the conviction is after a prior conviction for a cocaine base offense to a sentence of 15 days to two years and a minimum fine of \$2,500
 - The penalty changes from a sentence of 5 to 20 years and minimum fine of \$1,000 for the possession of 1 gram or more of cocaine base if the conviction is after two or more prior convictions for a cocaine base offense to a sentence of 90 days to 3 years and a minimum fine of \$5,000

Section 4: Increased Emphasis on Certain Aggravating Factors Related to the Seriousness of the Offense

- Directs that, under 28 USC§994, the U.S. Sentencing Commission shall review, and amend if appropriate, the sentencing guidelines for trafficking of controlled substance offenses to create or alter enhancements for dangerous weapons and violence, including but not limited to:
 - Increasing the existing enhancement for the possession of a dangerous weapon
 - Creating an enhancement for the use or brandishment of a dangerous weapon
 - Creating an enhancement for the use, or threatened use, of violence

Section 5: Increased Emphasis on Certain Factors Related to the Culpability of the Offender

- Directs that, under 28 USC §994, the U.S. Sentencing Commission shall review, and amend if appropriate, the sentencing guidelines to take into account the culpability and role of the defendant
 - With regards to adjustments for *aggravating* roles, the U.S. Sentencing Commission shall consider
 - Whether the offense committed was part of a pattern of ‘criminal livelihood’
 - Whether the defendant maintained an establishment for the manufacture and distribution of the controlled substance
 - Whether the defendant distributed controlled substances to someone under 18 or pregnant
 - Whether the defendant involved someone under the age of 18 or someone who is pregnant in the offense
 - Whether the defendant manufactured or distributed in locations described in 21 USC §849(a) or §860(a) (elementary schools, youth centers, truck stops, etc.)
 - Whether the defendant bribed or attempted to bribe a law enforcement official in connection with the offense
 - Whether the defendant imported controlled substances into the U.S. from another country
 - Whether the defendant committed the offense after previous conviction of a felony controlled substances offense
 - With regards to adjustments for *mitigating* roles, the U.S. Sentencing Commission shall consider
 - Whether the defendant had little knowledge of the illegal actions
 - Whether the defendant received little to no compensation for involvement in the offense
 - Whether the defendant engaged in the criminal activity on impulse, fear, or friendship when otherwise unlikely to do so