



## Talking points on H.R. 3327 and H.R. 3245

### **H.R. 3327, the Ramos-Compean Justice Act of 2009**

Before you ask your representative to cosponsor H.R. 3327, find out if he or she already cosponsors the bill by going to the ‘Bills in Congress’ section on FAMM’s website, [www.famm.org](http://www.famm.org). If so, be sure to say “thank you.”

#### **About the bill**

On July 24, Rep. Robert “Bobby” Scott (D-Va.) and Rep. Ted Poe (R-Texas) introduced H.R. 3327, the “Ramos-Compean Justice Act of 2009.” H.R. 3327 would allow courts to sentence below a mandatory minimum when, after looking at all the relevant facts and circumstances of the case and considering the purposes of punishment, imposing a mandatory minimum sentence would violate 18 U.S.C. § 3553(a), a federal law that requires the sentence be no greater than necessary to comply with the purposes of punishment.

H.R. 3327 would retain mandatory minimums in the criminal code and Congress would retain the ability to set mandatory minimums. At the same time, though, it would empower courts to use their discretion and impose a sentence below a mandatory minimum in cases where the mandatory minimum sentence would be longer than needed to achieve the goals of punishment.

The bill is named after two Border Patrol agents, Jose Compean and Ignacio Ramos, convicted of shooting an unarmed, fleeing man, later identified as an undocumented immigrant and drug smuggler. Both Border Agents received ten-year mandatory minimums under 18 U.S.C. § 924(c) for discharging a firearm in the commission of a crime of violence. George W. Bush commuted their sentences in January 2009 and they were released from prison.

#### **H.R. 3327:**

##### **•Saves taxpayer money.**

The abundance of low-level offenders incarcerated as a result of mandatory sentences has had a profound impact on the US prison system. Drug trafficking convictions and increased sentence length have driven the federal prison population explosion and mandatory minimums are largely responsible for the fact that drug sentences are three time longer than they were before the advent of mandatory minimums. The federal prison population of over 205,000 people strains the capacity of our federal prison system, which is currently 40 percent over capacity. Overall, the U.S. has the largest prison population in the world, with 2.3 million behind bars at a cost of \$5.4 billion to taxpayers each year.

**•Restores the balance between prosecutorial and judicial discretion.**

In an effort to eliminate unwarranted disparity, Congress went too far in the other direction, transferring discretion from the courts to the prosecutors. Prosecutors, working behind closed doors and out of open court, determine whether the defendant is tried in such a way as to trigger one or multiple mandatory minimum sentences. This legislation would provide judges, in open court and on the record, with a way to moderate excessive sentences.

**•Does not eliminate mandatory minimums.**

Mandatory minimums remain on the books for judges to use when appropriate. Data shows that judges largely comply with the advisory sentencing guidelines.

**•Does not give judges unfettered discretion.**

All sentencing decisions are subject to appellate review and judges are adhering closely to the federal sentencing guidelines. People convicted of crimes should make amends, but determinations about the correct sentence should be based on the facts of the case and culpability of the defendant rather than a preset number of years.

**Sample questions for lawmakers on H.R. 3327:**

- My [loved one] is serving a [number of years]-year mandatory minimum sentence for [type of offense]. I know that what he/she did was wrong, but this is a very long sentence for a nonviolent offense. It's also a "one-size-fits-all" approach to crime. In this country, I thought we sentenced individuals - not crimes. I thought courts imposed sentence, not lawmakers miles away in Washington. It seems un-American. Do you think that courts or Congress should determine sentences? Will you co-sponsor H.R. 3327, which would permit courts to impose an appropriate sentence when the mandatory minimum sentence is too long to do justice?
- I believe that the current mandatory minimum sentencing scheme has failed. Its failure comes with billion-dollar direct costs. The cost of incarcerating a person in prison for a year is nearly \$26,000. Right now, the U.S. has the largest prison population in the world, with 2.3 million behind bars at a cost of \$5.4 billion to taxpayers each year. This is wisely spent money when it is used on proper punishment, but the funds are wasted when we employ one-size-fits-all sentencing for everyone, no matter how well the punishment fits the crime. There is a bill – H.R. 3327 – that would allow judges, in unique cases, to sentence below the mandatory minimum, where appropriate. This would save us money and relieve pressure on overcrowded prisons. Will you cosponsor the H.R. 3327?

## **H.R. 3245, the Fairness in Cocaine Sentencing Act of 2009**

Before you ask your representative to cosponsor H.R. 3245, find out if he or she is already a cosponsor by going to the 'Bills in Congress' section on FAMM's website, [www.famm.org](http://www.famm.org). If so, be sure to say "thank you!"

### **About the bill**

On July 16, Congressman Robert "Bobby" Scott (D-Va.), introduced H.R. 3245, the "Fairness in Cocaine Sentencing Act of 2009." H.R. 3245 would eliminate the current 100-to-1 sentencing disparity between crack and powder cocaine sentences. The bill would treat all cocaine, including crack, the same for sentencing purposes. Under current law, five grams of crack cocaine and 500 grams of powder cocaine trigger the same five-year sentence. Fifty grams of crack cocaine and five kilograms of powder cocaine trigger the same 10-year sentence. H.R. 3245 would equalize crack and powder cocaine mandatory minimums. For example, 500 grams would trigger a five-year mandatory minimum and five kilos (or 5,000 grams) would trigger a 10-year mandatory minimum, no matter what form of cocaine is involved.

### **H.R. 3245:**

- **Saves federal tax dollars and eases prison overcrowding.**  
In 2008, federal prisons were operating at 40 percent overcapacity. Eliminating the disparity would ease overcrowding pressures and save an estimated \$259,208,950 in the first fifteen years.
- **Restores federal priorities.**  
When Congress passed the Federal Anti-Drug Abuse Act of 1986 and 1988, the intended targets of mandatory minimums it put in place were "serious" and "major" traffickers. In practice, the law failed to live up to its promise. 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.
- **Counter the perception of unfairness in the criminal justice system.**  
African Americans account for 81.8 percent of defendants sentenced to federal prison for crack cocaine offenses. Crack cocaine offenders serve, on average, 37 months longer than powder cocaine offenders. This disparity has contributed to a damaging perception of race-based unfairness in our criminal justice system.
- **Treat two like drugs the same.**  
Crack cocaine is pharmacologically the same drug as powder cocaine. The current policy overstates the harm of crack compared to powder cocaine.

**Sample question for lawmakers on H.R. 3245:**

- My [loved one] is serving a [number of years] for a crack cocaine conviction. I know what my loved one did is wrong, but his/her powder cocaine counterparts do not face the same unnecessarily harsh penalties. In fact, it takes five grams of crack cocaine – about the weight of 2 sugar packets – to trigger a five-year mandatory sentence, where it takes five hundred grams of powder cocaine to trigger the same five-year mandatory sentence even though they are, in all but form, the same drug. The 100-to-1 policy is expensive, has a disparate racial impact, and is harmful to families and communities. There is a bill in the House that would eliminate the current 100-to-1 disparity between crack and powder cocaine sentences, H.R. 3245. Have you cosponsored this bill? If not, will you?

**We want to hear from you! Please follow up with FAMM about the results of your town hall visit or other meeting with lawmakers by contacting:**

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