

Analysis of Senator Biden's Crack Cocaine Bill (S. 1711) Drug Sentencing Reform & Kingpin Trafficking Act of 2007

Section 3: Cocaine Sentencing Disparity Elimination

- 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 5 kilograms
 - 5 years: From 5 grams to 500 grams

Section 4: Elimination of Mandatory Minimum for Simple Possession

- 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 5: Increased Emphasis on Certain Aggravating and Mitigating Factors

- 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

- 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 is an organizer or leader of drug trafficking activities involving five or more persons
 - Whether the defendant maintained an establishment for the manufacture and distribution of the controlled substance
 - Whether the defendant distributed controlled substances to someone under 21 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 bodily injury or death occurred in connection with the offense
 - Whether the defendant committed the offense after previous conviction of felony controlled substances offense
 - Any other factor the Commission considers necessary
 - 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
 - Whether any maximum base offense level should be established for a defendant who qualifies for a mitigating role adjustment

Section 6: Offender Drug Treatment Incentive Grants

- The bill authorizes \$10,000,000 for each fiscal year 2008 and 2009 for a grant program under which the Attorney General may make grants to States, local government, territories, and Indian Tribes, for a fiscal year based on the percent of eligible offenders.
 - Grants should be used for continuing and improving drug treatment programs provided at prisons, jails and juvenile facilities of that entity;
 - Strengthen rehabilitation efforts for offenders by providing addiction recovery support services

Section 7: Grants for Demonstration Programs to Reduce Drug Use Substance Abusers

- The bill authorizes \$5,000,000 for each fiscal year 2008 and 2009 for a demonstration grant program carried out by the Attorney General to eligible partnerships for the purpose of establishing demonstration programs to reduce the use of alcohol and other drugs by supervised substance abusers during the period in which each such substance abuser is in prison, jail, or a juvenile facility, and until the completion of parole or court supervision of such abuser.
 - Programs would include addiction recovery support services such as job training and placement, peer support, mentoring, education and other related services that would strengthen rehabilitation efforts for substance abusers

Section 9: Increased Penalties for Major Drug Traffickers

- Increases penalties for manufacture, distribution, dispensation or possession with intent to manufacture, distribute or dispense by amending 21 U.S.C. 842(b)
 - If any person commits a violation involving 5 kilograms of crack cocaine, penalties increase from \$4,000,000 to \$10,000,000 million for an individual and \$10,000,000 to \$50,000,000 if the defendant is other than an individual
 - If any person commits a violation involving 5 kilograms of crack cocaine or more after a prior conviction for a felony drug offense has become final, penalties increase from \$8,000,000 to \$20,000,000 for an individual and \$20,000,000 to \$75,000,000 if the defendant is other than an individual
 - If any person commits a violation involving 50 grams of crack cocaine penalties increase from \$2,000,000 to \$5,000,000 for an individual and \$5,000,000 to \$25,000,000 if the defendant is other than an individual
 - If any person commits a violation involving 50 grams of crack cocaine after a prior conviction for a felony drug offense has become final, penalties increase from \$4,000,000 to \$8,000,000 for the individual and \$10,000,000 to \$50,000,000 if the defendant is other than an individual

- Increased penalties for importation and exportation by amending 21 U.S.C. 960(b)
 - If any person commits a violation involving 5 kilograms of crack cocaine penalties increase from \$4,000,000 to \$10,000,000 million for an individual and \$10,000,000 to \$50,000,000 if the defendant is other than an individual
 - If any person commits a violation involving 5 kilograms of crack cocaine or more after a prior conviction for a felony drug offense has become final, penalties increase from \$8,000,000 to \$20,000,000 for an individual and \$20,000,000 to \$75,000,000 if the defendant is other than an individual
 - If any person commits a violation involving 50 grams of crack cocaine penalties increase from \$2,000,000 to \$5,000,000 for an individual and \$5,000,000 to \$25,000,000 if the defendant is other than an individual
 - If any person commits a violation involving 50 grams of crack cocaine after a prior conviction for a felony drug offense has become final, penalties increase from \$4,000,000 to \$8,000,000 for the individual and \$10,000,000 to \$50,000,000 if the defendant is other than an individual

Section 10: Authorization of Appropriations and Report

- Authorizes appropriations to the Department of Justice at \$36,000,000 for each fiscal year 2008 and 2009 in support of the prosecution of high-level drug offenses
- Authorizes appropriations to the Department of Treasury at \$10,000,000 for each fiscal year 2008 and 2009 in support of the prosecution of high-level drug offenses
- Authorizes appropriations to the Department of Homeland Security at \$10,000,000 for each fiscal year 2008 and 2009 in support of the prosecution of high-level drug offenses