



## **Tips for an effective meeting with lawmakers about the crack cocaine disparity**

Use the following information as a guide for your conversation with the lawmaker. Remember, it is perfectly okay to refer to written materials to help you stay on track. Pick one or two points that you feel most passionately about and that you think will be of interest to the lawmaker. FAMM is available to help you prepare for your meetings. Please call Jennifer Seltzer Stitt, FAMM's federal legislative director at (202) 822-6700 for more information.

### **Opening the meeting**

- Thank the lawmaker for taking time to speak with you today about this important issue.
- Introduce yourself and all individuals in your group. If you are a constituent (because you live in the representative's district or senator's state that they represent), say that you are a constituent. (Lawmakers are most interested in hearing from their constituents.)
- Appoint one person in your group to serve as the primary spokesperson at the meeting, after introductions are made.
- If appropriate, thank the lawmaker for his/her support of this issue in the past.
- If appropriate, thank the lawmaker for his/her cosponsorship of relevant legislation. To learn if your member has sponsored relevant information, please go to the 'take action' section of FAMM's website and click on "issues" and "current legislation" or type in the <http://capwiz.com/famm/issues/bills/>.
- State the purpose of your visit: To ask for the lawmaker's support to **reform the crack cocaine disparity and eliminate mandatory minimum drug laws.**

### **What is FAMM?**

FAMM was established in 1991 to roll back the onslaught of mandatory minimum sentencing laws and promote fair and proportionate sentencing policies. FAMM educates lawmakers and the public about the harms caused by mandatory minimum sentences and why they should be changed. FAMM's national membership includes prisoners and their families, attorneys, judges, criminal justice experts and concerned citizens. FAMM promotes sentencing laws that are individualized, humane and sufficient but not greater than necessary, to impose just punishment, secure public safety and support successful rehabilitation and reentry.

### **Why this issue matters to you**

Tell your lawmaker that you are involved with FAMM and would like to talk about the crack cocaine disparity because [give a short statement about your loved one's case or the reason for your concern about sentencing.] If you have a loved one in prison, bring a picture to help put a face on sentencing reform.



Try to be clear that you do not oppose punishment, but oppose punishment that is excessive. Explain what this sentence means to you and your family. Be sure to limit yourself to a few minutes and leave time to discuss the potential for sentencing reform.

### **Background on crack cocaine sentencing (pick two or three points)**

- Under federal law, offenses involving five grams of crack cocaine, the equivalent of an individual packet of sugar, results in a mandatory five-year prison sentence. However, a person selling powder cocaine, another form of the same drug, must handle 100 times that amount (500 grams, more than two cups) to be sentenced to serve the same amount of time. This is known as the “100-to-1” sentencing disparity.
- Both the U.S. Supreme Court and the U.S. Sentencing Commission have indicated that the sentences for crack cocaine offenses are too harsh.
- The Sentencing Commission has repeatedly criticized the 100-to-1 ratio since 1995 because of the gravity of the problems caused by the harshness of the crack cocaine sentencing structure.<sup>123</sup> In its latest crack report, the Commission found that the penalties for crack cocaine
  - overstate the harm of crack compared to powder cocaine;
  - are too broad and apply mostly to low-level, nonviolent offenders;
  - primarily affect African American defendants; and
  - overstate the seriousness of most crack offenses and fail to provide adequate proportionality.<sup>4</sup>
- Reducing or eliminating the disparity would reduce prison overcrowding and excess federal spending. 201,086 federal prisoners were incarcerated by the Federal Bureau of Prisons at the end of 2006, 37 percent above its rated capacity. In fiscal year 2007, it cost \$24,922 to keep someone incarcerated in a Federal Bureau of Prisons facility for 12 months.
- We need to restore the proper federal role in prosecution of cocaine traffickers - allowing federal law enforcement to focus their resources on the major traffickers that bring large amounts of cocaine into the country and move it across state lines to the retail markets, leaving the small cases to the states to handle.

### **The “ask”**

The “ask” is the specific action you want your lawmaker to take. There are different “asks” for senator and representatives. Before asking them to support a particular bill, be sure to do your research and find out if the member is already a cosponsor of the legislation! To find out if your senator or representative is a cosponsor of a sentencing bill, go to [www.famm.org](http://www.famm.org) and click take action, then “issues” and scroll down to see current legislation and sponsors.

<sup>1</sup> United States Sentencing Commission, *Report to Congress, Cocaine and Federal Sentencing Policy* 1995, 1997, 2002, 2007;

<sup>2</sup> 1995 *Report* at 196.

<sup>3</sup> United States Sentencing Commission. Amendments to the Sentencing Guidelines, 66 (May 11, 2007), available at <http://www.ussc.gov/2007guid/may2007rf.pdf>.

<sup>4</sup> 2007 *Report* at 8.



### ***A senator's "ask"***

There are two bills on this subject that are worthy of your support. The two bills are – briefly:

- S.1711, the Drug Sentencing Reform and Kingpin Trafficking Act of 2007 introduced by Sen. Joseph Biden (D-Del.) would equalize the crack and powder penalties, get rid of mandatory minimum for simple possession, increase sentences for certain types of violations – such as selling crack cocaine to a minor – and authorize drug treatment. The Biden bill has a counterpart in the House (H.R. 4545).
- S. 1685, the Fairness in Drug Sentencing Act of 2007 would reduce the difference between crack and powder sentencing by increasing the amount of crack cocaine needed to trigger the five-year mandatory minimum sentences from five to 25 grams and the 10-year mandatory minimum from 50 to 250 grams. It would also eliminate the five-year mandatory minimum for simple possession. The bill would not eliminate the cocaine sentencing disparity but reduce it from 100:1 to 20:1.
- These bills address, in varying degrees, the deeply unjust consequences of the Anti-Drug Abuse Act of 1986, which imposed widely disparate sentences for possession or use of two forms of cocaine, powder cocaine and cocaine base (crack). Will the senator consider cosponsoring either of these bills?
- *If the answer is no:* ask if the senator would vote in support of either of them if the bills are voted out of committee.
- *If the answer is yes:* Thank the senator.
- *If the answer is maybe:* Say that you hope the bills will receive his or her full consideration and support.
- *Following up:* If you are meeting with staff or if the senator says that they would like to consider the legislation before answering, ask if you can follow-up in two weeks. If the answer is no, ask if you can keep the senator apprised of the progress of the bill as it might be something she or he is interested in reconsidering in the future.

### ***A representative's "ask"***

There are three bills on this subject that are worthy of your support. The three bills are – briefly:

- H.R. 5035, the Fairness in Cocaine Sentencing Act of 2008, introduced by Rep. Robert “Bobby” Scott (D-Va.), would eliminate federal mandatory minimum sentences for crack and powder cocaine offenses and provide funding for federal and state drug courts.
- H.R. 4545, the Drug Sentencing Reform and Cocaine Kingpin Trafficking Act of 2007, introduced by Rep. Sheila Jackson Lee (D-Texas), would equalize the crack and powder penalties, get rid of mandatory minimum for simple possession, increase sentences for certain types of violations – such as selling crack cocaine to a minor – and authorize drug treatment. The Jackson Lee bill has a counterpart in the Senate (S. 1711).
- H.R. 460, the Crack Cocaine Equitable Sentencing Act of 2007, introduced by Rep. Charles Rangel (D-N.Y.), would also eliminate the federal crack and powder cocaine disparity



- Will the representative consider cosponsoring any of these bills?
- *If the answer is no:* ask if the representative would vote in support of either of them if they are voted out of committee.
- *If the answer is yes:* Thank the representative.
- *If the answer is maybe:* Say that you hope the bills will receive his or her full consideration and support.
- **Following up:** If you are meeting with staff or if the representative says that they would like to consider the legislation before answering, ask if you can follow-up in two weeks. If the answer is no, ask if you can keep the representative apprised of the progress of the bill as it might be something she or he is interested in reconsidering in the future.

#### **ADDITIONAL BACKGROUND INFORMATION ON THE ISSUE:**

##### Recent developments in crack cocaine sentencing

- On November 1 sentencing guideline changes for crack cocaine that reduced crack sentences by an average of 15 months went into effect.
- On Monday, December 10, 2007, the U.S. Supreme Court in a 7-2 decision in the *Kimbrough v. United States* case held that federal judges can sentence crack cocaine offenders below the federal sentencing guidelines but not the mandatory minimums, if they believe the crack cocaine sentence, in light of the 100-to-1 statutory disparity between crack and powder cocaine, is too severe in a given case.
- On Tuesday, December 11, 2007, after holding a hearing and receiving written comment from over 33,000 individuals and organizations, the U.S. Sentencing Commission voted unanimously to retroactively apply the reductions to the sentencing guidelines for crack cocaine offense that became effective November 1. The reductions are subject to prosecutorial input and judicial review and reductions in 20,000 cases will be staggered over 30 years.
- Even with all these developments, it is critical to remember these changes represent only incremental progress in the effort to reform the federal crack cocaine law. The Sentencing Commission's guideline changes do not eliminate or alleviate the very long mandatory minimum sentences that many people are serving or will receive for crack cocaine offenses. Congress still must act in order to eliminate the statutory 100-to-1 disparity between crack and powder cocaine.

For more information on crack cocaine sentencing, please refer to FAMM's website:

[www.famm.org](http://www.famm.org)

If you have any questions before going to meet with your member, please call Jennifer Seltzer Stitt at FAMM (202) 822-6700. Be sure to let us know how your meeting goes!