

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Statement Of Senator Patrick Leahy (D-Vt.)
Chairman, Senate Judiciary Committee
On Consideration Of The Fair Sentencing Act Of 2009
Executive Business Meeting
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This morning we consider legislation to correct a decades-old injustice in our Federal cocaine sentencing laws and enhance the overall fairness and effectiveness of our criminal justice system. The Fair Sentencing Act of 2009 is an important and long overdue measure which Senator Durbin and I introduced last October. I thank Senators Feingold, Cardin, Whitehouse, Kaufman, Specter, and Franken for supporting this vital legislation. The House Judiciary Committee reported a similar measure last year. I hope we will do so today.

This bill will end a glaring inequity in our Federal cocaine sentencing laws that treats "crack" offenders one hundred times more harshly than other cocaine offenders without any legitimate basis for the difference. Twenty years of experience has taught us that many of our initial beliefs about crack cocaine were wrong. We now know that there is little or no pharmacological distinction between crack and powder cocaine. Yet the punishment for these offenses remains radically different.

Equally troubling, these disproportionate punishments have had a disparate impact on minority communities. This is unjust and runs contrary to our fundamental principles of equal justice under law. According to the latest statistics of the independent and nonpartisan United States Sentencing Commission, African Americans continue to make up the large majority of Federal crack cocaine offenders, accounting for 80 percent of all Federal crack cocaine offenses.

In a letter to our committee, John Payton, the highly regarded president of the NAACP Legal Defense Fund, called this unfair and unwarranted disparity "one of the most notorious symbols of racial discrimination in the modern criminal justice system." Congress has waited more than 20 years to act on legislation to correct the crack-powder disparity, and the harm to public confidence in our justice system continues. The mass incarceration that results from that disparity creates a perception that our drug laws unfairly target minorities. Today, thousands of men and women who used or sold crack cocaine continue to serve substantially longer prison sentences than people who used or sold powder cocaine, even though the drugs are no different. That is wrong, and this bill would correct that injustice.

This disparity has also led to alienation of whole communities from law enforcement and the government. That in turn causes people in those communities to be less willing to cooperate with law enforcement or provide the information and assistance necessary for police to be effective. That makes all of us less safe.

The most recent report to Congress on this issue from the Sentencing Commission contains clear evidence that reform is needed now. The Commission's May 2007 report chronicles the growing evidence demonstrating that the current cocaine sentencing disparity cannot be justified based on facts and science, yet it continues to swell our prisons and waste limited Federal resources on low-level street dealers rather than on the worst offenders - the drug kingpins. The Commission's report calls on Congress to focus limited Federal resources "more closely on serious and major traffickers." That is exactly what the bill we consider today would do. Attitudes about sentencing policy have changed in our Nation. In 2007, the Supreme Court ruled that judges have the power to address the unfair crack-powder disparity in Federal sentencing laws in certain cases. Last year, the Obama administration announced a new Federal cocaine sentencing policy that marked a significant step forward, asserting that Congress should eliminate the crack-powder sentencing disparity.

We have also heard calls for sentencing reform from Senators on both sides of the aisle. Senator Hatch has called the current ratio "an unjustifiable disparity." Senator Sessions, the Ranking Republican Member of this Committee, has called the 100:1 cocaine sentencing disparity "not justifiable" and called for changes to make the criminal justice system more effective and fair.

Last November, we heard from Attorney General Eric Holder, a former prosecutor, who reminded us that we should "eliminate the sentencing disparity between crack and powder cocaine while also ensuring that violent and dangerous crack offenders receive stiff and certain prison sentences, as they must."

The legislation we consider today strikes that proper balance. It recognizes the need to protect the public safety and to direct our limited federal resources toward arresting and prosecuting major drug dealers and traffickers. Yet it also ensures that our drug laws are fair, rational, and consistent with our core values of equal justice. The bill includes provisions that would increase fines for major drug traffickers, as well as provide sentencing enhancements for acts of violence committed during the course of a drug trafficking offense. I am pleased that the bill also eliminates the current mandatory minimum sentence for possession of crack cocaine, an unprecedented and unjust law which has contributed to the swelling of our prison population.

Despite our strong commitment to absolute parity and our belief that the bill as introduced strikes the right balance, Senator Durbin and I have both been open to compromise in order to get something done and reduce disparities that leave some in jail for years and years while their more privileged counterparts go home after relatively brief sentences. I am glad that Senator Graham has circulated a compromise amendment for us to consider today. I believe that his proposal may be the first step toward true bipartisan progress on this vital issue.

The time has come for the Committee to take action. Since 1995, the United States Sentencing Commission has issued report after report calling on Congress to address this unfair disparity. Attorney General Eric Holder has reminded us that "the stakes are simply too high to let reform

in this area wait any longer." Both the House and the Senate have held multiple hearings on the issue, and this Committee held a hearing on the topic just last year. Members of this Committee, on both sides of the aisle, have for years routinely introduced legislation to fix this disparity. It is time for us to act without any more excuses or stalling.

I commend Senator Durbin for his hard work and leadership on this important issue. He chaired the hearing before our Crime and Drugs Subcommittee last April to examine this issue, and he has worked tirelessly since then to move consensus legislation through this chamber. I also thank the many thoughtful individuals and organizations who have expressed support for this bill. I urge all Members to come together to report this bill today.

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