

Statement of  
**The Honorable Joseph R. Biden, Jr.**

United States Senator  
Delaware  
February 12, 2008

Statement Of Sen. Joseph Biden (D-Del.),  
Hearing On "Federal Cocaine Sentencing Laws:  
Reforming The 100:1 Crack Powder Disparity"  
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Good afternoon. Today, this Subcommittee examines an issue that has long been the subject of vigorous debate and study--the difference in the way that federal law treats drug offenses involving powder cocaine and crack cocaine.

Under current law, mere possession of 5 grams of crack - which is slightly less than the weight two sugar cubes - carries the same five-year, mandatory minimum sentence as distributing 500 grams of powder cocaine. Many have argued that this 100-to-1 disparity is arbitrary, unnecessary, and unjust--and I agree. The current disparity in cocaine sentencing simply cannot be justified based on the facts as we know them today.

In 1986, crack was the newest drug on the street. Congress was told that this smokable form of cocaine was instantly addictive, that its effect on a child if smoked during pregnancy was far worse than that of other drugs, and that it would ravage our inner cities.

I remember one headline that summed it up well. It read "New York City Being Swamped by 'crack'; Authorities Say They Are Almost Powerless to Halt Cocaine." They called it "the summer of crack."

In Congress, more than a dozen bills were introduced to increase the penalties for crack. Because we knew so little about it, the proposals were all over the map, ranging from the Reagan Administration's proposal of a 20-to-1 disparity to Senator Chiles' proposal of a 1000-to-1.

Senators Byrd, Dole and I led the effort to enact the Anti-Drug Abuse Act of 1986 which established the current 100-to-1 disparity.

Our intentions were good, but much of our information was bad. Each of the myths upon which we based the sentencing disparity has since been dispelled or altered. We now know:

? Crack and powder cocaine are pharmacologically identical. They are simply two forms of the same drug.

? Crack and powder cocaine cause identical physiological and psychological effects once they reach the brain.

? Both forms of cocaine are potentially addictive.

? The two drugs' effects on a fetus are identical. The "generation of crack babies" many predicted has not come to pass. In fact, some research shows that the prenatal effects of alcohol exposure are "significantly more devastating to the developing fetus than cocaine."

? Crack simply does not incite the type of violence that we feared. Gangs that deal in other types of drugs are every bit as violent as the crack gangs.

After 21 years of study and review, these facts have convinced me that the 100-to-1 disparity cannot be supported and that the penalties for crack and powder cocaine trafficking merit similar treatment under the law.

The past 21 years has also revealed that the dramatically harsher crack penalties have disproportionately impacted the African American community: 82% of those convicted of crack offenses in 2006 were African American.

With the starting premises now debunked, last June I introduced the Drug Sentencing Reform & Cocaine Kingpin Trafficking Act, which eliminates the disparity between crack and powder offenses. It does so without raising penalties for powder because there is not a shred of evidence that shows powder penalties are inadequate.

My bill also eliminates the five-year mandatory minimum sentence for simple possession of crack, the only mandatory minimum for possession of a controlled substance.

It focuses federal resources where we need them most--on major drug kingpins, not users and low-level dealers. It provides sentencing enhancements for all drug offenses that involve a dangerous weapon or violence.

And it provides \$30 million in grants to state and local governments to fund programs that improve the availability of drug treatment for offenders in prisons, jails, juvenile facilities, and those on supervised release.

I want to commend Senators Hatch and Sessions for their leadership on this issue and their respective bills to reduce the disparity. I hope we can work together to permanently fix this injustice.

There is a growing movement for bold action on this issue. Eight members of this Committee--four Republicans and four Democrats--are supporting one of the three bills pending before the Judiciary Committee.

In November, the bipartisan United States Sentencing Commission sent Congress an amendment to address what it called the "urgent and compelling" crack/powder disparity. Congress accepted the measure, which modestly reduced crack penalties pending comprehensive Congressional action.

The report that accompanied the Sentencing Commission's amendment is the fourth such report the Commission has issued in twelve years calling for Congressional action to substantially reduce the crack/powder sentencing disparity.

Editorial boards around the country have also urged Congress to act. The New York Times, San Francisco Chronicle, St. Petersburg Times, the Detroit Free-Press, and Miami Herald, have all endorsed my bill.

I welcome debate and discussion on this issue because I'm not convinced that any disparity in the sentencing of crack and powder defendants is justified given what we now know."

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