

Statement of
The Honorable Edward Kennedy

United States Senator
Massachusetts
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Hearing on "Federal Cocaine Sentencing Laws: Reforming the 100-to-1 Crack/Powder
Disparity"
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I commend my colleague, Senator Biden, for holding this hearing on one of the most serious problems in our criminal justice system - the disparity in sentences for crack and powder cocaine offenses. Last November, the Sentencing Commission finally amended the federal sentencing guidelines to reduce the disparity from 100 to 1 to 20 to 1. In December, the Commission took the further step of making the reduction retroactive, so that prisoners already sentenced can obtain the benefit of the reduction.

Unfortunately, Attorney General Mukasey is trying to disrupt this advance, by urging Congress to prevent current prisoners from obtaining retroactive relief for their excessive sentences. In testimony before the House Judiciary Committee last week, he warned that the improvements in the law would result in the release of "violent gang members" and cause more crime. We can't let such scare tactics by the Administration deter us from our goal of achieving fairness and legitimacy in the criminal justice system.

The very purpose of the Sentencing Reform Act when it was enacted over 20 years ago was to reduce unfair disparities and assure proportionality in punishment. But the severity of crack cocaine sentences shows that disparities remain. It's had a harsh impact on low-income and Africa-American communities, and it's undermined confidence in the fairness of the criminal justice system, since it feeds the perception that our laws unjustly target poor and minority communities.

The harsh sentences for crack cocaine were intended to punish those at the highest levels of the illegal drug trade - the kingpins and the traffickers. But the low amount of the drugs needed to trigger the harsh sentences means that these sentences are not limited to high level drug dealers: As the Sentencing Commission reported in 2005, only 15% of the defendants were high-level dealers. The overwhelming majority of those convicted were low-level offenders, and their harsh sentences had only a limited impact on the drug trade. The mass incarceration resulting from such sentences has done nothing to reduce drug use.

Also, at this time these laws were enacted, there was wide spread belief in the extraordinary dangers of crack cocaine. Medical experts have now determined however, that the effects of

crack were overstated, and it doesn't incite violent behavior. As with other drugs, the violence is tied to the distribution of the drug, not its use.

Changes in the drug market have also taken place. Demand for crack cocaine by new users has declined significantly, and so has the violence associated with its use.

How can Congress continue to support a policy we know is flawed? Under current law, one gram of crack cocaine triggers the same penalty as 100 grams of powder cocaine. Possession of 5 grams of crack triggers a 5 year mandatory minimum penalty. It's also the only drug with a mandatory prison sentence for first-time possession. In fact, judges, experts, and practitioners in the federal criminal justice system have long opposed all mandatory minimum sentences, because they undermine the goals of the Sentencing Reform Act by creating unwarranted disparities, subjecting defendants with different levels of culpability to the same punishment, and adding another unnecessary layer of complexity to the sentencing process.

Senator Hatch and I have introduced legislation that would take two important steps to alleviate the harsh consequences of cocaine sentences. The legislation writes into law the Sentencing Commission's reduction in the ratio from 100:1 to 20: 1. It also raises the amount of crack cocaine triggering a mandatory minimum sentence from 5 grams to 25 grams in order to target the most serious traffickers. These changes will make our cocaine laws more consistent with the penalties for other types of drugs that require large amounts to trigger a mandatory minimum.

Drug abuse and addiction are increasingly recognized as public health issues, not just as crimes. More resources are needed to break the cycle of drug addiction, which often leads to involvement in crimes. More resources must also be given to drug courts, which provide non-violent drug offenders with treatment. We know that since punishment and incarceration addresses only one part of the overall drug problem.

Our goal is to restore the original intent of these laws and direct our limited resources more toward arresting and prosecuting high level drug dealers and traffickers. Our harshest punishments should be reserved for those who truly deserve them.