

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,
Hearing On "Federal Cocaine Sentencing Laws:
Reforming The 100:1 Crack Powder Disparity"
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Today, we examine the differing penalties for crack and powder cocaine offenses and consider how best to make our drug laws more rational, more fair, and more consistent with our basic values. This Committee last held a hearing on reforming these drug penalties in 2002, when I previously served as Chairman.

I thank Senator Biden for holding this important hearing before the Crime and Drugs Subcommittee. It can be another step forward in our efforts to restore public confidence in our criminal justice system.

For more than 20 years, our Nation has had a federal cocaine sentencing policy that treats "crack" offenders one hundred times more harshly than cocaine offenders. We know that there is little or no pharmacological difference between crack and powder cocaine, yet the resulting punishments for these offenses is radically different--and some have observed racially different in that it is different populations that are largely affected.

A first-time offender caught selling five grams of powder cocaine would typically receive a six month sentence, and often be eligible for probation. That same offender selling the same amount of crack would face a mandatory five year prison sentence, with no possibility of leniency. This policy has needlessly swelled our prisons and drained precious Federal resources. Even more disturbing, this policy has had a disparate impact on racial and ethnic minorities, who make up 96 percent of those affected. It is no wonder this policy has sparked a nationwide debate about racial bias in our justice system and contributed to the difficulties in convincing people to cooperate as witnesses in crack cases.

The penalties Congress created in the 1980s have proven poorly suited to the concerns we sought to address. The goal of these policies was to punish severely those who were bringing crack into our neighborhoods, the major traffickers and drug kingpins. Many people were concerned about the effects of the crack epidemic on our young people in urban areas. Instead, the U.S. Sentencing Commission reports that over half of Federal crack cocaine offenders are street dealers or users, not the major traffickers Congress meant to target in the 1986 Anti-Drug Abuse Act.

We revisit this issue at a time when attitudes are changing in our Nation about sentencing policy. I thank the U.S. Sentencing Commission for its contributions to the debate and for its careful and judicious work. Its latest report to Congress makes clear that many of the principles that guided Congress when these sentences were adopted were based on reasoning that has not withstood the test of time and is not supported by the empirical evidence.

These findings have been a driving force behind recent actions by the Sentencing Commission and underlie the efforts in our courts to fix these unjust drug laws. Last year, the Sentencing Commission voted to change the Sentencing Guidelines, reduce the sentences of crack offenders and bring a measure of fairness to the process. And, just two months ago, this bipartisan, independent agency voted unanimously to apply this change retroactively in fairness. The United States Supreme Court recently ruled, as well, that our federal courts have power to address the unfair disparity in Federal sentencing laws between crack and powder cocaine.

I welcome these important changes. They are consistent with the goals of the Sentencing Reform Act, including "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," and they bring our Nation closer to a more rational drug policy. I also join in welcoming the President's friend and his appointment to chair the Sentencing Commission, the Honorable Ricardo Hinojosa.

Two days before taking office, more than seven years ago, President Bush said that he favored making sure that the sentences for powder and crack cocaine were the same. Many respected members of our Federal judiciary, those appointed by Republican Presidents and Democratic Presidents, have raised concerns and urged that action to promote greater fairness. We are fortunate to have with us today another of this Nation's outstanding judges, the Honorable Reggie Walton.

Most disappointing is this administration's failure to support even modest reforms of unjust, overreaching mandatory drug penalties. Last week the new Attorney General testified before the House Judiciary Committee in ways designed to raise fear and create the false impression that 1,600 violent gang members and dangerous drug offenders will be instantaneously and automatically set free to prey on hapless communities. As the Attorney General, himself a former Federal judge, should have known, and as he had to concede when questioned before that Committee, no one can be released without a hearing before a Federal judge who is obligated to evaluate each case and to consider factors such as the criminal history and violence. And the Justice Department participates in those hearings.

Hilary Shelton, the respected Director of the Washington Bureau of the NAACP, reacted to the Attorney General's testimony by noting it "is not only inaccurate and disingenuous, but it is alarmist and plays on the worst fears and stereotypes many Americans had of crack cocaine users in the 1980s." I hope we will not see a repeat of that type of testimony here today from the representative of the administration. Having been corrected, it should not be repeated. Having been shown the divisive nature of its impact, it should not be continued.

Outside of Washington, D.C., Justice Department lawyers who are prosecutors in the field have supported reducing sentences in particular cases. That is what American justice is about, fairness

to each individual. Americans must have faith and confidence that our drug laws are fair and administered fairly. I hope this hearing will move us one step closer to reaching that goal.

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