

DRUG POLICY ALLIANCE

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Reason. Compassion. Justice.

Ethan A. Nadelmann

Executive Director

Ira Glasser

President

March 30, 2007

United States Sentencing Commission
Attn: Public Officer
One Columbus Circle, N.E.
Suite 2-500
Washington, D.C. 20002-8002

Dear Commissioners:

Thank you for the opportunity to comment on this significant crisis in criminal justice policy. In my previous capacity as a sentencing advocate working in public defender offices, and as the former Research Director at the Justice Policy Institute, a criminal justice think tank, I have witnessed firsthand the negative repercussions of these unjust sentencing laws. Therefore, I suggest that the commission should take action to equalize the sentencing guidelines between crack cocaine and powder cocaine at the current level of powder cocaine and refocus efforts to target high-level traffickers rather than low-level offenders.

When considering the application of the 100-to-1 crack/powder cocaine sentencing law, it is disconcerting to note that a person who possesses or sells *one pound (only 454 grams)* of powder cocaine would still not fall under the same mandatory minimum sentence of 5 years that a crack cocaine seller possessing just *5 grams* would receive. This is due to the fact that it takes *500 grams* of powder cocaine to beget the same five-year mandatory minimum sentence for just *5 grams* of crack cocaine. That one pound of powder cocaine could be converted into enough crack cocaine to provide up to 64 sellers each with an eighth of an ounce. Simply because the powder cocaine seller had not altered the state of the drug, s/he is not subject to the same punishment as a crack cocaine seller.¹

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Crack Cocaine and Powder Cocaine are made from the same substance

As this body has previously determined, powder cocaine and crack cocaine are pharmacologically the same substance and "cause identical effects."ⁱⁱ In fact, one gram of powder cocaine yields less than one gram of crack cocaine. Understandably, cocaine *in either form* has a euphoric, energizing feeling and can be addictive. In fact, a typical dose of crack cocaine lasts a shorter period of time than a typical dose of powder cocaine.

Twenty years ago when the crack cocaine sentencing laws were first passed by Congress, the United States faced a panic about the alleged "crack epidemic" Congress responded under the impression that crack had inherent properties that made it infinitely more dangerous than powder cocaine. There were reports that crack cocaine was instantly addicting, invoked violent behavior and criminal activity in users, and had devastating effects on fetuses. These reports, which served as the basis for the huge disparity, have since been found to be fundamentally flawed, rendering the 100-to-1 disparity arbitrary and capricious. Further, these laws have proven ineffective in reducing drug use or distribution and have instead exacerbated racial disparity and injustices in our criminal justice system.

Crack cocaine sentencing policy has had an overwhelmingly disparate effect on people of color and the poor

Crack cocaine laws disproportionately target members of lower socio-economic and minority groups, particularly blacks. This body, in the previously mentioned 2002 report, noted "sentences appear to be harsher and more severe for racial minorities..." In 2003, blacks constituted 80% of those sentenced under federal crack cocaine laws while whites constituted only 7.8% despite the fact that more than 66% of people who use crack cocaine are white.ⁱⁱⁱ Perhaps the most blatant example of the racism inherent in these laws are statistics from a prison in Virginia. In 1983, prior to the hysteria surrounding crack cocaine and the subsequent introduction of sentencing laws, 63% of prison-sentenced drug offenders were white and 37% were minorities. By 1989, a mere 3 years after the laws

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were passed, 34% of offenders were white and 65% were minorities, although racial use rates did not change.^{iv} This extreme inverse can be attributed to the harsher crack cocaine sentences which are disproportionately applied to blacks and other minorities.

People convicted on nonviolent drug offenses have been disproportionately affected by crack cocaine sentencing policy

While mandatory minimum sentencing may have originally been intended to target high-level drug traffickers, members of organized crime rings and the violence associated with the crack cocaine market, this body's 2002 report found that 73% of crack cocaine defendants had low-level involvement in drug activity and *only 0.5%* were importers or high-level suppliers.^v Laws intended to decrease availability of crack cocaine and powder cocaine should target large-scale distribution networks rather than low-level sellers who have little to do with trafficking or distribution on a larger scale. According to the Department of Justice, individuals convicted of trafficking less than 25 grams of crack cocaine received an average sentence of almost 65 months, while individuals convicted of trafficking less than 25 grams of powder cocaine received an average of almost 14 months, a difference of four years.^{vi}

Furthermore, the current sentencing policy, and the targeting of low-level offenders, has proven to be devastating for families and communities that suffer high incarceration rates. According to a 2006 report by the American Civil Liberties Union, 1 in 14 black children has a parent in prison and 1.4 million black men are disfranchised because of felony drug convictions. Single-parent homes, unemployment, disillusionment with the justice system and stigmas from felony convictions and incarceration can contribute to the degradation of already disadvantaged communities which serves only to increase crime rates. Again, this body has noted the damage, stating even "perceived improper racial disparity fosters disrespect for and lack of confidence in the criminal justice system."

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Recommendations

The United States Sentencing Commission should continue to advocate for reforming the laws as it has for the last decade. Although Congress has continuously rejected this body's recommendation in this matter, we support you in your efforts to right this gross wrong in criminal justice policy. In 2004, this body asserted that, "[r]evising the disparity in sentences for crack and powder would do more to reduce the sentencing disparity 'than any other single policy change' and would 'dramatically improve the fairness of the federal sentencing system.'"^{vii}

We urge you to continue your efforts, and specifically ask that you recommend the following to the 110th U.S. Congress:

1. **Revise the crack cocaine and powder cocaine sentencing to a more equitable ratio of 1-1 by raising the crack cocaine quantity threshold, not lowering the quantity triggers for powder cocaine.** To engender vastly different sentences for the same substance, albeit in different forms, is a nonsensical and an extremely harmful policy. However, lowering the powder cocaine threshold would not remedy the injustice and only compound the crisis facing our overcrowded prison system. While past Congresses of past may have limited this body's recommendation language, we believe that you all have the power to voice your collective belief and recall the 1-1 recommendation made over a decade ago.
2. **Refocus law enforcement priorities to target cocaine traffickers.** Law enforcement time and money should be invested in targeting, and apprehending, individuals that traffic and/or import high levels of either form of cocaine. This change would have a two-fold benefit: it would impact the quantity of cocaine products on our streets and lessen the excessive sentences handed down to minorities and/or individuals convicted of low level, nonviolent offenses.

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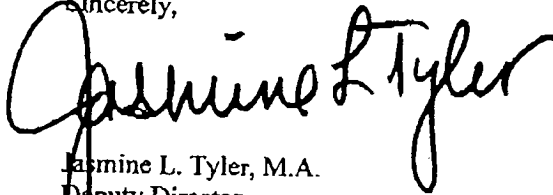
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Thank you for your dedicated and deliberate attention to this very important issue.

Sincerely,

Jasmine L. Tyler, M.A.
Deputy Director
Office of National Affairs

ⁱ Caulkins, Johnathan P., Peter C. Rydall, William L. Schwabe, and James Chiesa. Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers Money? Drug Policy Research Center: Rand, 1997.

ⁱⁱ United States Sentencing Commission. Cocaine and Federal Sentencing Policy. May 2002.

ⁱⁱⁱ Vagins, Deborah J., and Jesselyn McCurdy. "Cracks in the System: Twenty Years of Unjust Federal Crack Cocaine Law." American Civil Liberties Union. October 2006.

^{iv} Duster, Troy. "Pattern, Purpose and Race in the Drug War: The Crisis of Credibility in Criminal Justice." Crack in America, Berkeley: University of California Press, 1997.

^v United States Sentencing Commission. Cocaine and Federal Sentencing Policy. May 2002.

^{vi} ibid

^{vii} Vagins, Deborah J., and Jesselyn McCurdy. "Cracks in the System: Twenty Years of Unjust Federal Crack Cocaine Law." American Civil Liberties Union. October 2006.

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