

111TH CONGRESS
1ST SESSION

S. 1789

To restore fairness to Federal cocaine sentencing.

IN THE SENATE OF THE UNITED STATES

OCTOBER 15, 2009

Mr. DURBIN (for himself, Mr. LEAHY, Mr. SPECTER, Mr. FEINGOLD, Mr. CARDIN, Mr. WHITEHOUSE, Mr. KAUFMAN, Mr. FRANKEN, Mr. DODD, Mr. KERRY, and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To restore fairness to Federal cocaine sentencing.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Sentencing Act
5 of 2009”.

6 **SEC. 2. COCAINE SENTENCING DISPARITY ELIMINATION.**

7 (a) CSA.—Section 401(b)(1) of the Controlled Sub-
8 stances Act (21 U.S.C. 841(b)(1)) is amended—

9 (1) in subparagraph (A)(iii), by striking “50
10 grams” and inserting “5 kilograms”; and

1 (2) in subparagraph (B)(iii), by striking “5
2 grams” and inserting “500 grams”.

3 (b) **IMPORT AND EXPORT ACT.**—Section 1010(b) of
4 the Controlled Substances Import and Export Act (21
5 U.S.C. 960(b)) is amended—

6 (1) in paragraph (1)(C), by striking “50
7 grams” and inserting “5 kilograms”; and

8 (2) in paragraph (2)(C), by striking “5 grams”
9 and inserting “500 grams”.

10 **SEC. 3. ELIMINATION OF MANDATORY MINIMUM SENTENCE**
11 **FOR SIMPLE POSSESSION.**

12 Section 404(a) of the Controlled Substances Act (21
13 U.S.C. 844(a)) is amended by striking the sentence begin-
14 ning “Notwithstanding the preceding sentence,”.

15 **SEC. 4. INCREASED PENALTIES FOR MAJOR DRUG TRAF-**
16 **FICKERS.**

17 (a) **INCREASED PENALTIES FOR MANUFACTURE,**
18 **DISTRIBUTION, DISPENSATION, OR POSSESSION WITH IN-**
19 **TENT TO MANUFACTURE, DISTRIBUTE, OR DISPENSE.**—
20 Section 401(b)(1) of the Controlled Substances Act (21
21 U.S.C. 841(b)) is amended—

22 (1) in subparagraph (A), by striking
23 “\$4,000,000”, “\$10,000,000”, “\$8,000,000”, and
24 “\$20,000,000” and inserting “\$10,000,000”,

1 “\$50,000,000”, “\$20,000,000”, and “\$75,000,000”,
 2 respectively; and

3 (2) in subparagraph (B), by striking
 4 “\$2,000,000”, “\$5,000,000”, “\$4,000,000”, and
 5 “\$10,000,000” and inserting “\$5,000,000”,
 6 “\$25,000,000”, “\$8,000,000”, and “\$50,000,000”,
 7 respectively.

8 (b) INCREASED PENALTIES FOR IMPORTATION AND
 9 EXPORTATION.—Section 1010(b) of the Controlled Sub-
 10 stances Import and Export Act (21 U.S.C. 960(b)) is
 11 amended—

12 (1) in paragraph (1), by striking “\$4,000,000”,
 13 “\$10,000,000”, “\$8,000,000”, and “\$20,000,000”
 14 and inserting “\$10,000,000”, “\$50,000,000”,
 15 “\$20,000,000”, and “\$75,000,000”, respectively,
 16 and

17 (2) in paragraph (2), by striking “\$2,000,000”,
 18 “\$5,000,000”, “\$4,000,000”, and “\$10,000,000”
 19 and inserting “\$5,000,000”, “\$25,000,000”,
 20 “\$8,000,000”, and “\$50,000,000”, respectively.

21 **SEC. 5. ENHANCEMENTS FOR ACTS OF VIOLENCE DURING**
 22 **THE COURSE OF A DRUG TRAFFICKING OF-**
 23 **FENSE.**

24 Pursuant to its authority under section 994 of title
 25 28, United States Code, the United States Sentencing

1 Commission shall review and, if appropriate, amend the
2 sentencing guidelines to ensure that the penalties for an
3 offense involving trafficking of a controlled substance pro-
4 vide tiered enhancements for the involvement of a dan-
5 gerous weapon or violence, including, if appropriate—

6 (1) an enhancement for the use or brandishing
7 of a firearm or other dangerous weapon;

8 (2) an enhancement for the use, or threatened
9 use, of violence; and

10 (3) any other enhancement in this respect that
11 the Commission considers necessary.

12 **SEC. 6. INCREASED EMPHASIS ON DEFENDANT'S ROLE AND**
13 **CERTAIN AGGRAVATING FACTORS.**

14 Pursuant to its authority under section 994 of title
15 28, United States Code, the United States Sentencing
16 Commission shall review and, if appropriate, amend the
17 sentencing guidelines to ensure that the penalties for an
18 offense involving trafficking of a controlled substance ade-
19 quately take into account the culpability of the defendant
20 and the role of the defendant in the offense, including con-
21 sideration of whether enhancements should be added, or
22 existing enhancements should be increased, for the fol-
23 lowing aggravating factors associated with the offense:

1 (1) The defendant committed the offense as
2 part of a pattern of criminal conduct engaged in as
3 a livelihood.

4 (2) The defendant is an organizer, manager, su-
5 pervisor, or leader of drug trafficking activities.

6 (3) The defendant maintained an establishment
7 for the manufacture or distribution of the controlled
8 substance.

9 (4) The defendant distributed a controlled sub-
10 stance to an individual under the age of 21 years or
11 over the age of 64 years, or to a pregnant individual.

12 (5) The defendant involved an individual under
13 the age of 21 years or over the age of 64 years, or
14 a pregnant individual, in the offense.

15 (6) The defendant distributed a controlled sub-
16 stance to an individual who was unusually vulnerable
17 due to physical or mental condition, or who was par-
18 ticularly susceptible to criminal conduct.

19 (7) The defendant involved an individual who
20 was unusually vulnerable due to physical or mental
21 condition, or who was particularly susceptible to
22 criminal conduct.

23 (8) The defendant used threats, coercion, or in-
24 timidation to involve an individual in the offense.

1 (9) The defendant manufactured or distributed
2 the controlled substance in a location described in
3 section 416(a) or section 419(a) of the Controlled
4 Substances Act (21 U.S.C. 856(a) or 860(a)).

5 (10) The defendant bribed, or attempted to
6 bribe, a Federal, State, or local law enforcement of-
7 ficer in connection with the offense.

8 (11) The defendant was involved in importation
9 into the United States of a controlled substance.

10 (12) Bodily injury or death occurred in connec-
11 tion with the offense.

12 (13) The defendant used another person to pur-
13 chase, sell, transport, or store controlled substances
14 and used impulse, fear, friendship, affection, or
15 some combination thereof to involve such person in
16 the offense when such person had a minimum knowl-
17 edge of the illegal enterprise and was to receive little
18 or no compensation from the illegal transaction.

19 (14) The defendant engaged in witness intimi-
20 dation, tampered, or destroyed evidence, or other-
21 wise obstructed justice in conjunction with the inves-
22 tigation or prosecution of the offense.

23 (15) Any other factor the Commission considers
24 necessary.

1 **SEC. 7. INCREASED EMPHASIS ON CERTAIN MITIGATING**
2 **FACTORS.**

3 Pursuant to its authority under section 994 of title
4 28, United States Code, the United States Sentencing
5 Commission shall review and, if appropriate, amend the
6 sentencing guidelines to ensure that the penalties for an
7 offense involving trafficking of a controlled substance ade-
8 quately take into account mitigating factors associated
9 with the offense, including—

10 (1) whether the defendant had minimum knowl-
11 edge of the illegal enterprise;

12 (2) whether the defendant received little or no
13 compensation in connection with the offense;

14 (3) whether the defendant acted on impulse,
15 fear, friendship, or affection when the defendant was
16 otherwise unlikely to commit such an offense; and

17 (4) whether any maximum base offense level
18 should be established for a defendant who qualifies
19 for a mitigating role adjustment.

20 **SEC. 8. EMERGENCY AUTHORITY FOR UNITED STATES SEN-**
21 **TENCING COMMISSION.**

22 (a) IN GENERAL.—The United States Sentencing
23 Commission, in its discretion, may—

24 (1) promulgate amendments pursuant to the di-
25 rectives in this Act in accordance with the procedure
26 set forth in section 21(a) of the Sentencing Act of

1 1987 (Public Law 100–182), as though the author-
2 ity under that Act had not expired; and

3 (2) pursuant to the emergency authority pro-
4 vided in paragraph (1), make such conforming
5 amendments to the Sentencing Guidelines as the
6 Commission determines necessary to achieve consist-
7 ency with other guideline provisions and applicable
8 law.

9 (b) PROMULGATION.—The Commission shall promul-
10 gate any amendments under subsection (a) promptly so
11 that the amendments take effect on the same date as the
12 amendments made by this Act.

13 **SEC. 9. REPORT ON EFFECTIVENESS OF DRUG COURTS.**

14 (a) IN GENERAL.—Not later than 1 year after the
15 date of enactment of this Act, the Comptroller General
16 of the United States shall prepare a report analyzing the
17 effectiveness of drug court programs receiving funds from
18 the Drug Court Discretionary Grant Program of the
19 United States Department of Justice’s Office of Justice
20 Programs.

21 (b) FOCUS.—The report required by subsection (a)
22 shall—

23 (1) assess the Department of Justice’s efforts
24 to collect data on the performance of federally fund-
25 ed drug courts;

- 1 (2) address the effect of drug courts on recidi-
2 vism and substance abuse rates;
- 3 (3) address any cost benefits resulting from the
4 use of drug courts as alternatives to incarceration;
- 5 (4) assess the Department of Justice's response
6 to previous recommendations made by the Comp-
7 troller General regarding drug court programs; and
- 8 (5) make recommendations concerning the per-
9 formance, impact, and cost-effectiveness of federally
10 funded drug court programs.

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