

107TH CONGRESS
1ST SESSION

S. 1874

To reduce the disparity in punishment between crack and powder cocaine offenses, to more broadly focus the punishment for drug offenders on the seriousness of the offense and the culpability of the offender, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 20 (legislative day, DECEMBER 18), 2001

Mr. SESSIONS (for himself and Mr. HATCH) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To reduce the disparity in punishment between crack and powder cocaine offenses, to more broadly focus the punishment for drug offenders on the seriousness of the offense and the culpability of the offender, and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Drug Sentencing Reform Act of 2001”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—REDUCTION OF DISPARITY IN SENTENCING BETWEEN
CRACK AND POWDER COCAINE

Sec. 101. Reduction in disparity in sentencing between crack and powder cocaine.

Sec. 102. Sentencing guideline conforming changes and enhancements for acts of violence during the course of a drug trafficking offense.

TITLE II—INCREASED EMPHASIS ON THE DEFENDANT’S ROLE
IN THE OFFENSE

Sec. 201. Increase in sentence for leadership role in drug offense.

Sec. 202. Limit on sentence when defendant has lesser role in the offense.

Sec. 203. Elderly, nonviolent prisoner pilot program.

Sec. 204. Emergency amendment authority; effective date.

1 TITLE I—REDUCTION OF DIS-
2 PARITY IN SENTENCING BE-
3 TWEEN CRACK AND POWDER
4 COCAINE

5 SEC. 101. REDUCTION IN DISPARITY IN SENTENCING BE-
6 TWEEN CRACK AND POWDER COCAINE.

7 (a) AMENDMENT OF THE CONTROLLED SUBSTANCES
8 ACT.—Section 401 of the Controlled Substances Act (21
9 U.S.C. 841) is amended as follows:

10 (1) TEN-YEAR MANDATORY MINIMUM.—

11 (A) DECREASE IN AMOUNT OF POWDER
12 COCAINE NECESSARY TO TRIGGER MANDATORY
13 MINIMUM.—In subsection (b)(1)(A)(ii) by strik-
14 ing “5 kilograms” and inserting “4 kilograms”.

15 (B) INCREASE IN AMOUNT OF CRACK CO-
16 CAINE NECESSARY TO TRIGGER MANDATORY
17 MINIMUM.—In subsection (b)(1)(A)(iii) by

1 striking “50 grams” and inserting “200
2 grams”.

3 (2) FIVE-YEAR MANDATORY MINIMUM.—

4 (A) DECREASE IN AMOUNT OF POWDER
5 COCAINE NECESSARY TO TRIGGER MANDATORY
6 MINIMUM.—In subsection (b)(1)(B)(ii) by strik-
7 ing “500 grams” and inserting “400 grams”.

8 (B) INCREASE IN AMOUNT OF CRACK CO-
9 CAINE NECESSARY TO TRIGGER MANDATORY
10 MINIMUM.—In subsection (b)(1)(B)(iii) by
11 striking “5 grams” and inserting “20 grams”.

12 (b) AMENDMENT OF THE CONTROLLED SUBSTANCES
13 IMPORT AND EXPORT ACT.—Section 1010 of the Con-
14 trolled Substances Import and Export Act (21 U.S.C.
15 960) is amended as follows:

16 (1) TEN-YEAR MANDATORY MINIMUM.—

17 (A) DECREASE IN AMOUNT OF POWDER
18 COCAINE NECESSARY TO TRIGGER MANDATORY
19 MINIMUM.—In subsection (b)(1)(B) by striking
20 “5 kilograms” and inserting “4 kilograms”.

21 (B) INCREASE IN AMOUNT OF CRACK CO-
22 CAINE NECESSARY TO TRIGGER MANDATORY
23 MINIMUM.—In subsection (b)(1)(C) by striking
24 “50 grams” and inserting “200 grams”.

25 (2) FIVE-YEAR MANDATORY MINIMUM.—

1 (A) DECREASE IN AMOUNT OF POWDER
 2 COCAINE NECESSARY TO TRIGGER MANDATORY
 3 MINIMUM.—In subsection (b)(2)(B) by striking
 4 “500 grams” and inserting “400 grams”.

5 (B) INCREASE IN AMOUNT OF CRACK CO-
 6 CAINE NECESSARY TO TRIGGER MANDATORY
 7 MINIMUM.—In subsection (b)(2)(C) by striking
 8 “5 grams” and inserting “20 grams”.

9 (c) CONFORMING CHANGE TO PENALTY FOR POSSES-
 10 SION.—Section 404(a) of the Controlled Substances Act
 11 (21 U.S.C. 844(a)) is amended in the fourth sentence by
 12 striking “5 years” and inserting “1 year”.

13 **SEC. 102. SENTENCING GUIDELINE CONFORMING CHANGES**
 14 **AND ENHANCEMENTS FOR ACTS OF VIO-**
 15 **LENCE DURING THE COURSE OF A DRUG**
 16 **TRAFFICKING OFFENSE.**

17 Pursuant to its authority under section 994 of title
 18 28, United States Code, and in accordance with this sec-
 19 tion, the United States Sentencing Commission shall re-
 20 view and amend the Federal sentencing guidelines and
 21 policy statements to ensure—

22 (1) that guideline offense levels based upon the
 23 quantity of powder cocaine and crack cocaine are
 24 consistent with the amendments made by section
 25 101; and

(2) that the guidelines provide an appropriate additional penalty increase of from 2 to 8 levels if the defendant used violence, made a credible threat to use violence, directed the use or threatened use of violence, or possessed a firearm, or other dangerous weapon, during the course of a drug trafficking offense.

TITLE II—INCREASED EMPHASIS ON THE DEFENDANT’S ROLE IN THE OFFENSE

SEC. 201. INCREASE IN SENTENCE FOR LEADERSHIP ROLE IN DRUG OFFENSE.

Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and policy statements to ensure an additional increase of at least 2 levels if—

(1) the defendant, as an organizer, leader, manager, or supervisor of drug trafficking activity, is subject to an aggravating role enhancement under the guidelines; and

(2) the offense involved 1 or more of the following super-aggravating factors—

1 (A) the defendant used another person to
2 purchase, sell, transport, or store controlled
3 substances, used impulse, fear, friendship, af-
4 fection, or some combination thereof to involve
5 such person in the offense, and such person had
6 a minimum knowledge of the illegal enterprise
7 and was to receive little or no compensation
8 from the illegal transaction;

9 (B) the defendant maintained an establish-
10 ment for the manufacture or distribution of a
11 controlled substance, as generally described in
12 section 406 of the Controlled Substances Act
13 (21 U.S.C. 856);

14 (C) the defendant distributed a controlled
15 substance to a person under age 18, a person
16 over age 64, or a pregnant individual, or in-
17 volved a person under age 18, a person over age
18 64, or a pregnant individual in drug trafficking;

19 (D) the defendant bribed, or attempted to
20 bribe, a Federal, State, or local law enforce-
21 ment official in connection with a drug traf-
22 ficking offense;

23 (E) the defendant was involved in the im-
24 portation into the United States of a controlled
25 substance; or

1 (F) the defendant committed the drug
 2 trafficking offense as part of a pattern of crimi-
 3 nal conduct engaged in as a livelihood.

4 **SEC. 202. LIMIT ON SENTENCE WHEN DEFENDANT HAS**
 5 **LESSER ROLE IN THE OFFENSE.**

6 Pursuant to its authority under section 994 of title
 7 28, United States Code, and in accordance with this sec-
 8 tion, the United States Sentencing Commission shall re-
 9 view and amend, as appropriate, the Federal sentencing
 10 guidelines and policy statements to ensure that—

11 (1) if the defendant is subject to a minimal role
 12 adjustment under the guidelines, the base offense
 13 level based solely on drug quantity shall not exceed
 14 level 32; and

15 (2) if the defendant otherwise qualifies for a
 16 minimal role adjustment under the guidelines and
 17 had a minimum knowledge of the illegal enterprise,
 18 was to receive little or no compensation from the il-
 19 legal transaction, and acted on impulse, fear, friend-
 20 ship, or affection when the defendant was otherwise
 21 unlikely to commit such an offense, there shall be an
 22 additional reduction of 2 offense levels.

23 **SEC. 203. ELDERLY, NONVIOLENT PRISONER PILOT PRO-**
 24 **GRAM.**

25 (a) DEFINITIONS.—In this section:

1 (1) CRIME OF VIOLENCE.—The term “crime of
2 violence” has the same meaning given the term in
3 section 16 of title 18, United States Code.

4 (2) DESIGNATED FACILITY.—The term “des-
5 ignated facility” means a Federal penitentiary des-
6 ignated by the Attorney General as appropriate for
7 the pilot program.

8 (3) DIRECTOR.—The term “Director” means
9 the Director of the Bureau of Prisons.

10 (4) ELIGIBLE PRISONER.—The term “eligible
11 prisoner” means a prisoner in the custody of the
12 Bureau of Prisons who—

13 (A) is not less than 65 years of age;

14 (B) is serving a term of imprisonment
15 after conviction for an offense other than a
16 crime of violence and has served the greater of
17 10 years or one-half of the term of imprison-
18 ment;

19 (C) has not been convicted in the past of
20 any Federal or State crime of violence;

21 (D) has not been determined by the Bu-
22 reau of Prisons, on the basis of information the
23 Bureau uses to make custody classifications,
24 and in the sole discretion of the Bureau, to
25 have a history of violence;

1 (E) has not escaped, or attempted to es-
 2 cape, from the Bureau of Prisons facility; and

3 (F) has not been determined by the Direc-
 4 tor, pursuant to the disciplinary system of the
 5 Bureau of Prisons, to have committed an in-
 6 fraction involving an act of violence.

7 (5) HOME DETENTION.—The term “home de-
 8 tention” has the same meaning given the term in the
 9 Federal Sentencing Guidelines, and includes deten-
 10 tion in a nursing home or other residential long-term
 11 care facility.

12 (6) PILOT PROGRAM.—The term “pilot pro-
 13 gram” means the pilot program carried out in ac-
 14 cordance with this section.

15 (7) TERM OF IMPRISONMENT.—The term “term
 16 of imprisonment” includes multiple terms of impris-
 17 onment ordered to run consecutively or concurrently,
 18 which shall be treated as a single, aggregate term of
 19 imprisonment for purposes of this section.

20 (b) PROGRAM ESTABLISHED.—

21 (1) IN GENERAL.—Notwithstanding section
 22 3624 of title 18, United States Code, or any other
 23 provision of law, the Director shall carry out a pilot
 24 program at 1 or more designated facilities, under
 25 which the Director shall, in accordance with para-

graph (2), place each prisoner who is determined to be an eligible prisoner on home detention until the date on which the term of imprisonment to which the prisoner was sentenced expires.

(2) TIMING OF RELEASE.—In carrying out the pilot program, the Director shall place an eligible prisoner on home detention under paragraph (1)—

(A) with respect to a prisoner who is determined to be an eligible prisoner on or before the date that is 90 days after the date of enactment of this Act, not later than 180 days after the date of enactment of this Act; and

(B) with respect to a prisoner who is determined to be an eligible prisoner after the date that is 90 days after the date of enactment of this Act and before the date that is 3 years and 91 days after such date of enactment, not later than 90 days after the date of such determination.

(3) VIOLATION OF TERMS OF HOME DETENTION.—A violation of the terms of the home detention, including the commission of another Federal, State, or local crime, shall result in the return of the prisoner to the prior custody of that prisoner.

(c) PROGRAM EVALUATION.—

1 (1) IN GENERAL.—The Director shall contract
 2 with an independent organization to monitor and
 3 evaluate the progress of each prisoner released
 4 under the pilot program during the 3-year period be-
 5 ginning on the date of such release.

6 (2) ANNUAL REPORT.—The organization de-
 7 scribed in paragraph (1) shall annually submit to
 8 the Director and to Congress a report on the pilot
 9 program, which shall include—

10 (A) an evaluation of the effectiveness of
 11 the pilot program in providing successful transi-
 12 tion to eligible prisoners from incarceration to
 13 the community, including data relating to the
 14 recidivism rates for those prisoners; and

15 (B) the cost savings to the Federal Gov-
 16 ernment resulting from the early removal of eli-
 17 gible prisoners from incarceration.

18 **SEC. 204. EMERGENCY AMENDMENT AUTHORITY; EFFEC-**
 19 **TIVE DATE.**

20 (a) EMERGENCY AMENDMENT AUTHORITY.—

21 (1) IN GENERAL.—The United States Sen-
 22 tencing Commission, in its discretion, may—

23 (A) promulgate amendments pursuant to
 24 the directives in this Act in accordance with the
 25 procedure set forth in section 21(a) of the Sen-

1 tencing Act of 1987 (Public Law 100–182), as
2 though the authority under that Act had not
3 expired; and

4 (B) pursuant to the emergency authority
5 provided in paragraph (1), make such con-
6 forming amendments to the Sentencing Guide-
7 lines as the Commission determines necessary
8 to achieve consistency with other guideline pro-
9 visions and applicable law.

10 (2) PROMULGATION.—The Commission shall
11 promulgate any amendments under paragraph (1)
12 promptly so that the amendments take effect on the
13 same date as the amendments made by this Act.

14 (b) EFFECTIVE DATE.—

15 (1) IN GENERAL.—The amendments made by
16 this Act shall apply to any offense committed on or
17 after 180 days after the date of enactment of this
18 Act. There shall be no retroactive application of any
19 portion of this Act.

20 (2) APPLICABILITY.—This subsection shall not
21 apply to section 203 of this Act.

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