

110TH CONGRESS
1ST SESSION

S. 1685

A bill to reduce the sentencing disparity between powder and crack cocaine violations, and to provide increased emphasis on aggravating factors relating to the seriousness of the offense and the culpability of the offender.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2007

Mr. HATCH (for himself, Mr. KENNEDY, Mrs. FEINSTEIN, and Mr. SPECTER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

A bill to reduce the sentencing disparity between powder and crack cocaine violations, and to provide increased emphasis on aggravating factors relating to the seriousness of the offense and the culpability of the offender.

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 “Fairness in Drug Sen-
5 tencing Act of 2007”.

1 **SEC. 2. POWDER AND CRACK COCAINE SENTENCING DIS-**
2 **PARITY REDUCTION.**

3 (a) CONTROLLED SUBSTANCES ACT.—Section
4 401(b)(1) of the Controlled Substances Act (21 U.S.C.
5 841(b)(1)) is amended—

6 (1) in subparagraph (A)(iii), by striking “50
7 grams” and inserting “250 grams”; and

8 (2) in subparagraph (B)(iii), by striking “5
9 grams” and inserting “25 grams”.

10 (b) CONTROLLED SUBSTANCES IMPORT AND EXPORT
11 ACT.—Section 1010(b) of the Controlled Substances Im-
12 port and Export Act (21 U.S.C. 960(b)) is amended—

13 (1) in paragraph (1)(C), by striking “50
14 grams” and inserting “250 grams”; and

15 (2) in paragraph (2)(C), by striking “5 grams”
16 and inserting “25 grams”.

17 **SEC. 3. CHANGE IN PENALTY FOR POSSESSION OF CRACK**
18 **COCAINE.**

19 Section 404(a) of the Controlled Substances Act (21
20 U.S.C. 844(a)) is amended by striking “Notwithstanding
21 the preceding sentence,” and all that follows through “the
22 mixture or substance exceeds 1 gram.”.

1 **SEC. 4. INCREASED EMPHASIS ON CERTAIN AGGRAVATING**
2 **FACTORS RELATED TO SERIOUSNESS OF THE**
3 **OFFENSE.**

4 Pursuant to its authority under section 994 of title
5 28, United States Code, the United States Sentencing
6 Commission shall review and, if appropriate, amend the
7 sentencing guidelines to ensure that the penalties for an
8 offense involving trafficking of a controlled substance pro-
9 vide tiered enhancements for the involvement of a dan-
10 gerous weapon or violence, including, if appropriate—

11 (1) an increase to the existing enhancement for
12 possession of a dangerous weapon;

13 (2) an enhancement for the use or
14 brandishment of a dangerous weapon;

15 (3) an enhancement for the use, or threatened
16 use, of violence; and

17 (4) any other enhancement the Commission
18 considers necessary.

19 **SEC. 5. INCREASED EMPHASIS ON CERTAIN FACTORS RE-**
20 **LATED TO THE CULPABILITY OF THE OF-**
21 **FENDER.**

22 (a) IN GENERAL.—Pursuant to its authority under
23 section 994 of title 28, United States Code, the United
24 States Sentencing Commission shall review and, if appro-
25 priate, amend the sentencing guidelines to ensure that the
26 penalties for an offense involving trafficking of a con-

1 trolled substance adequately take into account the culpa-
2 bility of the defendant and the role of the defendant in
3 the offense.

4 (b) CONSIDERATIONS.—In carrying out this section,
5 the United States Sentencing Commission shall con-
6 sider—

7 (1) whether enhancements should be added, ei-
8 ther to the existing enhancements for aggravating
9 role or otherwise, that take into account aggravating
10 factors associated with the offense, including—

11 (A) whether the defendant committed the
12 offense as part of a pattern of criminal conduct
13 engaged in as a livelihood;

14 (B) whether the defendant maintained an
15 establishment for the manufacture or distribu-
16 tion of the controlled substance;

17 (C) whether the defendant distributed a
18 controlled substance to an individual under the
19 age of 18 years or a pregnant individual;

20 (D) whether the defendant involved an in-
21 dividual under the age of 18 years or a preg-
22 nant individual in the offense;

23 (E) whether the defendant manufactured
24 or distributed the controlled substance in a lo-
25 cation described in section 409(a) or section

1 419(a) of the Controlled Substances Act (21
2 U.S.C. 849(a) or 860(a));

3 (F) whether the defendant bribed, or at-
4 tempted to bribe, a Federal, State, or local law
5 enforcement officer in connection with the of-
6 fense;

7 (G) whether the defendant was involved in
8 the importation into the United States of the
9 controlled substance;

10 (H) whether the defendant committed the
11 offense after previously being convicted of a fel-
12 ony controlled substances offense; and

13 (I) any other factor the Commission con-
14 siders necessary; and

15 (2) whether adjustments should be added, ei-
16 ther to the existing guideline for mitigating role or
17 otherwise, that take into account mitigating factors
18 associated with the offense, including—

19 (A) whether the defendant had minimum
20 knowledge of the illegal enterprise;

21 (B) whether the defendant received little or
22 no compensation in connection with the offense;
23 and

24 (C) whether the defendant acted on im-
25 pulse, fear, or friendship when the defendant

1 was otherwise unlikely to commit such an of-
2 fense.

3 **SEC. 6. EMERGENCY AUTHORITY AND DEADLINE FOR COM-**
4 **MISSION ACTION.**

5 The United States Sentencing Commission shall pro-
6 mulgate the guidelines, policy statements, or amendments
7 provided for in this Act as soon as practicable, and in any
8 event not later than 90 days after the date of enactment
9 of this Act, in accordance with the procedure set forth in
10 section 21(a) of the Sentencing Act of 1987 (28 U.S.C.
11 994 note), as though the authority under that Act had
12 not expired.

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