



GRAND LODGE FRATERNAL ORDER OF POLICE®

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6 November 2007

The Honorable Ricardo H. Hinojosa
Chairman
U.S. Sentencing Commission
One Columbus Circle NE
Suite 2-500
South Lobby
Washington, D.C. 20002-8002
ATTN: Public Affairs - Retroactivity Public Comment

Dear Chairman Hinojosa,

I am writing this letter on behalf of the membership of the Fraternal Order of Police in response to the request by the U.S. Sentencing Commission for public comment as to whether recent changes to the sentencing guidelines related to the penalties for offenses involving cocaine base ("crack") and to certain criminal history rules should be included in subsection (c) of §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)), thus allowing the retroactive application of these amendments to previously sentenced defendants. The FOP strongly opposes such application of these recent changes.

On 27 April 2007, the Commission adopted an amendment to the sentencing guidelines which lowered the penalties for crack cocaine offenses by two levels. The FOP vigorously opposed these changes, which were twice adopted by the Commission and twice rejected by Congress. However, with the failure of Congress to act on 1 November 2007, the changes submitted by the Commission to Congress on 1 May 2007 went into effect. Under the new guidelines, the so-called 100:1 "disparity" between sentences for crack and powdered cocaine will be reduced to approximately 30:1 to 70:1 because of the unique nature of the guidelines and the varying offense level. However, the statutory mandatory minimums remain unchanged, which will result in bunching at the 5 and 10 year levels and will minimize the credit that defendants will get for pleading guilty. Further, because the new guidelines treat crack differently than all other drugs having a mandatory minimum--for other drugs having a five-year mandatory minimum for trafficking offenses, the guidelines offense level is 26. The recent changes single out crack cocaine by assigning a base offense level of 24 for an amount of drugs commiserate with the five-year mandatory minimum.

In the view of the FOP, retroactively applying the recently adopted changes to the sentencing guidelines (specifically, Amendments 9 and 12) retroactively will compound the error of reducing the penalties for offenders convicted of crack offenses. We strongly oppose such application.

—BUILDING ON A PROUD TRADITION—



To begin with, data provided by the Commission indicates that such application would result in the reduced sentences for at least 19,500 crack dealers. It should also be noted that these sentencing reductions would be *in addition* to any other reductions the offender received, such as a reduction for cooperation with the United States or "good time" credit in prison. It is important that the Commission recognize that these are not "low-level dealers" or first time offenders. At least 80% of them had previously been convicted of a crime, a majority of them have multiple prior convictions and 35% of them also possessed a firearm in connection with their drug dealing operation. Further, more than 15% of these offenders are in the highest criminal history category (VI). Clearly, these inmates are far more likely to reoffend.

These are not empty statistics--but hard facts. While the new guidelines have certainly weakened the overall fight against crack-related crime, retroactive application of the guidelines will have an immediate and deleterious effect on public safety and the crime rates in our communities. Using the Commission's own data, it is projected that at least 2,500 additional crack dealers will be released into the community either immediately or within the first year of retroactive application. Another 5,000 could be released into the community within twenty-four months of the effective date of the retroactive application. Further, while the average reduction in sentence is approximately 27 months, some offenders--primarily those who are the most likely to be high-level dealers with significant criminal histories--could see their sentences reduced in excess of 49 months. At a time when law enforcement is seeing an increase in crime rates that have fallen for more than a decade, it seems at variance with common sense and good public policy to release *en masse* crack dealers and drug offenders into our neighborhoods.

It is important to remember the incalculable devastation wrought on our nation during the crack epidemic--millions of lives were damaged and families wrecked by this drug and many of our cities have never fully recovered. Law enforcement worked hard over the past fifteen years to reduce our nation's crime rates to historic lows and this success was due in part to a commitment by the Federal government to incarcerate for longer periods of time those offenders who dealt in crack cocaine. While other drugs of the moment may have eclipsed crack in popularity and availability, the market for crack remains massive--with nearly one million Americans who continue their addiction to this terrible drug. In our view, retroactive reduction of the sentences of the criminals responsible for creating and feeding these addictions is a grievous error which will inflict great harm on many innocent Americans. For this reason, we urge the Commission to reject the retroactive application of the new sentencing guidelines.

I want to thank you and the Commission in advance for your consideration of the view of the more than 325,000 members of the Fraternal Order of Police. If I can provide you with any additional information on this issue, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,


Chuck Canterbury
National President