



March 28, 2011

Honorable Patti B. Saris  
Chair, United States Sentencing Commission  
One Columbus Circle, N.E.  
Suite 2-500, South Lobby  
Washington, D.C. 20002-8002

**Member Organizations**

National Bar Association  
Association of  
Black Psychologists  
National Association of  
Black Social Workers, Inc.  
Howard University  
School of Law  
Congressional Black Caucus  
Foundation, Inc.  
National Dental Association  
National Black Caucus of  
State Legislators  
Association of  
Black Sociologists  
National Black Nurses  
Association, Inc.  
National Organization of  
Black Law Enforcement  
Executives  
National Association of  
Blacks in Criminal Justice  
National Black Alcoholism &  
Addictions Council, Inc.  
Black Administrators in  
Child Welfare, Inc.  
Association of  
Black Health-System  
Pharmacists  
National Medical Association  
National Black Police  
Association  
National Alliance of Black  
School Educators  
National Institute for Law and  
Equity  
National Conference of Black  
Political Scientists  
Black Psychiatrists of  
America, Inc.  
National Black Prosecutors  
Association  
National Organization of  
African Americans in  
Housing  
Thurgood Marshall Action  
Coalition

Dear Judge Saris:

The National African American Drug Policy Coalition, Inc., a coalition of twenty-five (25) member organizations, submits the following public comments in response to the matters under consideration as a result of the enactment of the Fair Sentencing Act of 2010, Pub. L. 111-120. In addition to those organizations listed in the margin, the Coalition includes the National Historically Black Colleges and Universities Substance Abuse Consortium, Inc. and the National Association of Health Services Executives. The Coalition exists as a Section 501©(3) non-profit corporate entity to bring a unified voice of African American professional organizations together to deal with issues affecting substance abuse, co-occurring mental health conditions, and needed related reforms in the healthcare system, and in the juvenile and criminal justice systems of the United States. At the central core of its mission is to focus on a public health and medical approach for offenders whose illegal drug possession or incidental selling is a result of their addiction or drug dependency in lieu of solely a criminal justice approach, to design, develop and implement a drug education and prevention program to influence minority youth not to become involved in illegal drug offenses and juvenile delinquent conduct but instead to pursue educational excellence, and to eliminate the vestiges of disparate and discriminatory treatment in the healthcare, juvenile justice and criminal justice systems based on race or ethnic origin.

First we support the reduction of all federal drug sentencing guidelines by two base offense levels on the theory that the statute permits the Commission to do so and that the duration of sentences imposed in the past are longer than necessary to protect the public safety and carry out the will of Congress. We urge the Commission to reset the base offense levels that trigger the statutory minimums for crack cocaine offenders at levels 24 and 30. In our view this would ensure greater proportionality and fairness in sentencing, reduce the disparity which is having racial impact, and result in reducing incarceration costs beyond what is necessary. Indeed, we urge the Commission to set these levels for all drug offenses for consistency, equity and fairness.

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Further, we are of the view that the current law places too much emphasis on the quantity of drugs involved rather than on the circumstances of the offenses and the history of the offender when deciding the length of the sentence. In our view the sentence should be tailored to the characteristics and conduct of the individual more so than being driven by the quantity of drugs involved. Basing offense levels under the guidelines approach solely on quantity neglects culpability rather than focusing on the role and circumstances of the offender in committing the offense. The disparate impact still caused by the new 18:1 ratio should be minimized as much as possible.

Further, we urge retroactive application of the Fair Sentencing Act of 2010 and the related guideline changes we recommend. This is essential to achieve fairness to Federal cocaine offense sentencing. The Commission should provide that defendants who were sentenced under the Guidelines prior to the enactment of the Fair Sentencing Act of 2010 shall have the opportunity to petition the courts for a sentence modification in view of the Act's equitable changes in crack cocaine sentencing. The Commission in 2007 applied its then change in Guideline retroactively, and this is adequate precedent for doing so here. Many of the same concerns that prompted retroactive application of the 2007 Amendment apply with equal force regarding retroactivity of the Fair Sentencing Act of 2010 provisions. Earlier precedents with reference to LSD, marijuana and oxycodone amendments in 1993, 1995 and 2003 respectively also support doing so here.

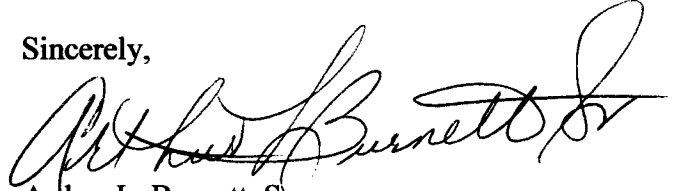
A Study by the Commission's Office of Research and Data has indicated that 85% of the offenders who would be eligible for retroactive application would be African Americans. In our view to deny this benefit here would have obvious adverse racial overtones of perpetuating disparate and discriminatory treatment. Finally, we note that the sentencing reduction will not be automatic as judges at the time of considering the motion to modify will have the authority and insight to consider public safety concerns and the discipline record of the defendant while in prison in determining eligibility for sentence reduction. In our opinion, this would not impose an unreasonable burden on the judicial system.

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Finally, we observe that these changes will promote the goal of having the federal government focusing more on higher level drug traffickers and offenders and leaving low-level street persons to be dealt with by the States under their policies, including providing for a public health approach for those offenders whose offenses can be directly attributed to their drug addiction or dependency, and to diversion and drug court programs, which the National African American Drug Policy Coalition, Inc. strongly supports.

We thank the Commission for this opportunity to share the above views and comments and hope that they will be helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur L. Burnett, Sr.", with a large, stylized flourish at the end.

Arthur L. Burnett, Sr.  
National Executive Director