



August 16, 2010

The Honorable William K. Sessions III, Chair  
United States Sentencing Commission  
One Columbus Circle, NE, Suite 2-500, South Lobby  
Washington, DC 20002-8002

Dear Chairman Sessions:

The Sentencing Project is pleased to submit comments to the U.S. Sentencing Commission regarding its proposed priorities for the amendment cycle ending May 1, 2011. We wish to focus our comments on priority #5 as outlined in your official notice, pertaining to the Commission's continuation of work on cocaine sentencing policy.

The Fair Sentencing Act of 2010 which President Obama signed into law earlier this month significantly reduces the quantity-based sentencing disparity between crack and powder cocaine by raising the quantity of crack cocaine necessary to trigger 5- and 10- year mandatory minimum sentences. The law also eliminates the mandatory minimum penalty for simple possession of crack cocaine. The Sentencing Project applauds these changes and the expected impact they will create, including the shortening of sentences for low-level crack cocaine offenses, the lessening of racial disparity among the incarcerated population and the eventual reduction in the federal prison population.

The Fair Sentencing Act requires that the Commission implement the conforming changes to the Sentencing Guidelines within 90 days after passage. The Sentencing Project urges the Commission to also act to make these mandated guideline changes applicable to persons arrested and sentenced prior to enactment of the new law.

In four separate reports to Congress, the Commission has stressed that the 100:1 quantity ratio between crack and powder cocaine is unwarranted. Congress has agreed and reduced the disparity to 18:1. Although the new law is silent on retroactive application of the new sentencing structure, the Commission does have the jurisdiction to apply its changes to the Sentencing Guidelines retroactively. Indeed, in December, 2007, the Commission voted unanimously to apply its Crack minus 2 guideline amendment retroactively. Since that time, about 16,000 prisoners have benefited from a sentence reduction averaging more than two years. Judges, prosecutors, and defense attorneys have worked well together to process 24,000 cases seeking a sentence reduction in only two and a half years. By most accounts the administrative process has been smooth and reports of public safety concerns since the release of offenders began are rare.

The Commission's recent experience with retroactivity of the crack cocaine amendment is valuable. Despite sensationalized warnings of administrative burden and increases in crime, these concerns have not been borne out. This success should encourage the Commission to continue on its path towards increased sentencing fairness by applying the Fair Sentencing Act to persons sentenced before its enactment. Congress now agrees with the Commission that the 100 to 1 disparity is unjust. Those sentenced prior to reform deserve to have their sentences adjusted in recognition of that fact.

We appreciate the significant contributions that the Commission has made to consideration of the crack cocaine sentencing issue over many years, and we hope that this can be advanced further by applying the new legislation retroactively. Thank you in advance for your consideration of these comments.

Sincerely,

Marc Mauer  
Executive Director