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Sensible Sentencing Reform: The Fair Sentencing Act of 2010

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WHAT THE FSA DID

The Fair Sentencing Act of 2010 **changed the statutory penalties for crack cocaine** (see table below) and **eliminated the mandatory minimum penalty** for simple possession of crack cocaine.

	Before FSA	After FSA
21 U.S.C. § 841		
5-yr min	5 g	28 g
10-yr min	50 g	280 g
21 U.S.C. § 960		
5-yr min	5 g	28 g
10-yr min	50 g	280 g

DEMOGRAPHICS

Male offenders continued to make up the large majority of crack cocaine offenders after the FSA. The race and ethnicity of crack cocaine offenders was also **largely unchanged after the FSA**.

	FY 2010	FY 2014
Race/Ethnicity		
Black	78.7%	83.4%
Hispanic	13.0%	8.6%
White	7.3%	6.5%
Other	1.1%	1.5%
Gender		
Male	91.6%	90.2%
Female	8.4%	9.8%

The FSA implemented long-held Commission findings and recommendations on federal cocaine policy.

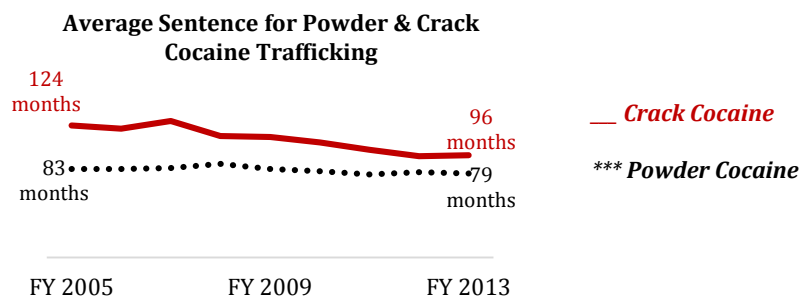
In 1995, 1997, 2002, and 2007, the Commission submitted **four separate reports** to Congress regarding cocaine sentencing, based on legislative history, scientific and medical literature, extensive analysis of the Commission's own data, public comment, and expert testimony.

In its reports, the Commission made four core findings regarding crack cocaine penalties as they existed before the Fair Sentencing Act:

- they **overstated the relative harmfulness of crack** cocaine compared to powder cocaine;
- they swept too broadly and **applied most often to lower level offenders**;
- they **overstated the seriousness** of most crack cocaine offenses and failed to provide adequate proportionality; and
- their **severity mostly impacted minorities**.

As a result of these findings, the Commission recommended that Congress reduce crack cocaine penalties so that the crack-to-powder drug quantity ratio was no more than 20-to-1, and that Congress repeal the mandatory minimum penalty for simple possession of crack cocaine.

The FSA reduced the disparity between powder cocaine and crack cocaine sentences.



Average crack cocaine sentences are decreasing and as a result are becoming more similar to average powder cocaine sentences, which have stayed relatively stable over time. There has been no sizeable increase in offense seriousness for crack cocaine offenders as measured by drug quantity, weapon involvement, and role adjustments. There has also been no overall increase in criminal history of crack cocaine offenders.

The relative stability in offense and offender characteristics combined with the decreased guideline and statutory penalties have resulted in a decrease in average crack cocaine sentences since the FSA.



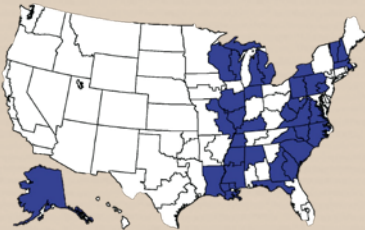
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FEDERAL CASELOAD

Crack cocaine was the most commonly-sentenced drug in nearly 40% of all federal judicial districts in 2010; in 2014, it was the **most commonly-sentenced drug in less than 10% of all federal districts.**

Fiscal Year 2010



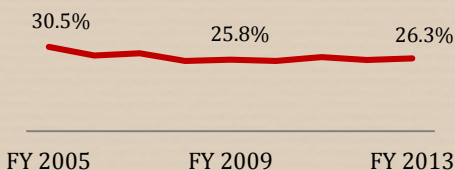
Fiscal Year 2014



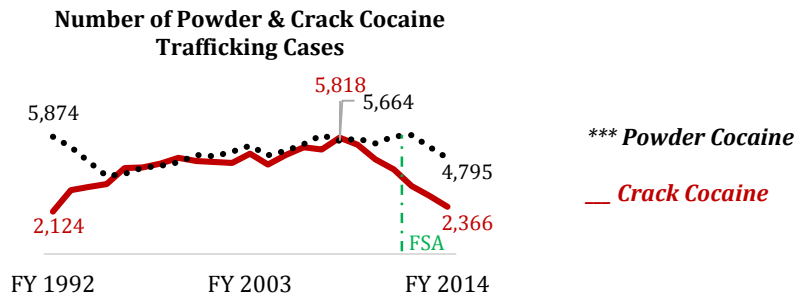
COOPERATION

The willingness of crack offenders to cooperate, as measured by the rate of below-range sentences for substantial assistance, appears unaffected by reductions in crack cocaine penalties during this time period.

Rates of Substantial Assistance
Provided to Government
(USSG §5K1.1)



After the FSA, many fewer crack cocaine offenders were sentenced in the federal system.



Beginning just prior to the FSA and accelerating after it, there has been a steep reduction in the number of crack cocaine offenders sentenced in the federal system. Between 2010—the last year before the FSA took effect—and 2014, the number of crack cocaine offenders sentenced in the federal system decreased by half.

The FSA will reduce the federal prison population.

The Commission identified two impacts of the FSA on the federal prison population that it can estimate. The first is the impact that the guideline reductions the Commission made in response to the FSA will have going forward:

- **5,984 drug trafficking offenders** would have had a higher sentence under the pre-FSA statutory and guideline scheme.
- These offenders received an **average sentence of 71 months.**
- Had the FSA not passed, their average sentence **would have been 106 months.**
- Based on this difference, the Commission estimates that the FSA will result in a **savings of 15,320 bed-years** to the Bureau of Prisons.

The second is the impact of the Commission's decision to retroactively apply the guideline reductions it made in response to the FSA:

- As of December 2014, **6,880 crack cocaine offenders** had received reduced sentences
- The Commission estimates that these reductions will result in a **savings of 14,333 bed-years** to the Bureau of Prisons.

In total, the prospective and retrospective changes made in response to the FSA resulted in an **approximate savings of 29,653 bed-years** to the Bureau of Prisons.