

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 1789

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2010

Referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To restore fairness to Federal cocaine sentencing.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fair Sentencing Act  
3 of 2010”.

4 **SEC. 2. COCAINE SENTENCING DISPARITY REDUCTION.**

5 (a) CSA.—Section 401(b)(1) of the Controlled Sub-  
6 stances Act (21 U.S.C. 841(b)(1)) is amended—

7 (1) in subparagraph (A)(iii), by striking “50  
8 grams” and inserting “280 grams”; and

9 (2) in subparagraph (B)(iii), by striking “5  
10 grams” and inserting “28 grams”.

11 (b) IMPORT AND EXPORT ACT.—Section 1010(b) of  
12 the Controlled Substances Import and Export Act (21  
13 U.S.C. 960(b)) is amended—

14 (1) in paragraph (1)(C), by striking “50  
15 grams” and inserting “280 grams”; and

16 (2) in paragraph (2)(C), by striking “5 grams”  
17 and inserting “28 grams”.

18 **SEC. 3. ELIMINATION OF MANDATORY MINIMUM SENTENCE**  
19 **FOR SIMPLE POSSESSION.**

20 Section 404(a) of the Controlled Substances Act (21  
21 U.S.C. 844(a)) is amended by striking the sentence begin-  
22 ning “Notwithstanding the preceding sentence,”.

23 **SEC. 4. INCREASED PENALTIES FOR MAJOR DRUG TRAF-**  
24 **FICKERS.**

25 (a) INCREASED PENALTIES FOR MANUFACTURE,  
26 DISTRIBUTION, DISPENSATION, OR POSSESSION WITH IN-

1 TENT TO MANUFACTURE, DISTRIBUTE, OR DISPENSE.—  
2 Section 401(b)(1) of the Controlled Substances Act (21  
3 U.S.C. 841(b)) is amended—

4 (1) in subparagraph (A), by striking  
5 “\$4,000,000”, “\$10,000,000”, “\$8,000,000”, and  
6 “\$20,000,000” and inserting “\$10,000,000”,  
7 “\$50,000,000”, “\$20,000,000”, and “\$75,000,000”,  
8 respectively; and

9 (2) in subparagraph (B), by striking  
10 “\$2,000,000”, “\$5,000,000”, “\$4,000,000”, and  
11 “\$10,000,000” and inserting “\$5,000,000”,  
12 “\$25,000,000”, “\$8,000,000”, and “\$50,000,000”,  
13 respectively.

14 (b) INCREASED PENALTIES FOR IMPORTATION AND  
15 EXPORTATION.—Section 1010(b) of the Controlled Sub-  
16 stances Import and Export Act (21 U.S.C. 960(b)) is  
17 amended—

18 (1) in paragraph (1), by striking “\$4,000,000”,  
19 “\$10,000,000”, “\$8,000,000”, and “\$20,000,000”  
20 and inserting “\$10,000,000”, “\$50,000,000”,  
21 “\$20,000,000”, and “\$75,000,000”, respectively;  
22 and

23 (2) in paragraph (2), by striking “\$2,000,000”,  
24 “\$5,000,000”, “\$4,000,000”, and “\$10,000,000”

1 and inserting “\$5,000,000”, “\$25,000,000”,  
2 “\$8,000,000”, and “\$50,000,000”, respectively.

3 **SEC. 5. ENHANCEMENTS FOR ACTS OF VIOLENCE DURING**  
4 **THE COURSE OF A DRUG TRAFFICKING OF-**  
5 **FENSE.**

6 Pursuant to its authority under section 994 of title  
7 28, United States Code, the United States Sentencing  
8 Commission shall review and amend the Federal sen-  
9 tencing guidelines to ensure that the guidelines provide an  
10 additional penalty increase of at least 2 offense levels if  
11 the defendant used violence, made a credible threat to use  
12 violence, or directed the use of violence during a drug traf-  
13 ficking offense.

14 **SEC. 6. INCREASED EMPHASIS ON DEFENDANT’S ROLE AND**  
15 **CERTAIN AGGRAVATING FACTORS.**

16 Pursuant to its authority under section 994 of title  
17 28, United States Code, the United States Sentencing  
18 Commission shall review and amend the Federal sen-  
19 tencing guidelines to ensure an additional increase of at  
20 least 2 offense levels if—

21 (1) the defendant bribed, or attempted to bribe,  
22 a Federal, State, or local law enforcement official in  
23 connection with a drug trafficking offense;

24 (2) the defendant maintained an establishment  
25 for the manufacture or distribution of a controlled

1 substance, as generally described in section 416 of  
2 the Controlled Substances Act (21 U.S.C. 856); or

3 (3)(A) the defendant is an organizer, leader,  
4 manager, or supervisor of drug trafficking activity  
5 subject to an aggravating role enhancement under  
6 the guidelines; and

7 (B) the offense involved 1 or more of the fol-  
8 lowing super-aggravating factors:

9 (i) The defendant—

10 (I) used another person to purchase,  
11 sell, transport, or store controlled sub-  
12 stances;

13 (II) used impulse, fear, friendship, af-  
14 fection, or some combination thereof to in-  
15 volve such person in the offense; and

16 (III) such person had a minimum  
17 knowledge of the illegal enterprise and was  
18 to receive little or no compensation from  
19 the illegal transaction.

20 (ii) The defendant—

21 (I) knowingly distributed a controlled  
22 substance to a person under the age of 18  
23 years, a person over the age of 64 years,  
24 or a pregnant individual;

1           (II) knowingly involved a person  
2           under the age of 18 years, a person over  
3           the age of 64 years, or a pregnant indi-  
4           vidual in drug trafficking;

5           (III) knowingly distributed a con-  
6           trolled substance to an individual who was  
7           unusually vulnerable due to physical or  
8           mental condition, or who was particularly  
9           susceptible to criminal conduct; or

10          (IV) knowingly involved an individual  
11          who was unusually vulnerable due to phys-  
12          ical or mental condition, or who was par-  
13          ticularly susceptible to criminal conduct, in  
14          the offense.

15          (iii) The defendant was involved in the im-  
16          portation into the United States of a controlled  
17          substance.

18          (iv) The defendant engaged in witness in-  
19          timidation, tampered with or destroyed evi-  
20          dence, or otherwise obstructed justice in connec-  
21          tion with the investigation or prosecution of the  
22          offense.

23          (v) The defendant committed the drug  
24          trafficking offense as part of a pattern of crimi-  
25          nal conduct engaged in as a livelihood.

1 **SEC. 7. INCREASED EMPHASIS ON DEFENDANT'S ROLE AND**  
2 **CERTAIN MITIGATING FACTORS.**

3 Pursuant to its authority under section 994 of title  
4 28, United States Code, the United States Sentencing  
5 Commission shall review and amend the Federal sen-  
6 tencing guidelines and policy statements to ensure that—

7 (1) if the defendant is subject to a minimal role  
8 adjustment under the guidelines, the base offense  
9 level for the defendant based solely on drug quantity  
10 shall not exceed level 32; and

11 (2) there is an additional reduction of 2 offense  
12 levels if the defendant—

13 (A) otherwise qualifies for a minimal role  
14 adjustment under the guidelines and had a min-  
15 imum knowledge of the illegal enterprise;

16 (B) was to receive no monetary compensa-  
17 tion from the illegal transaction; and

18 (C) was motivated by an intimate or famil-  
19 ial relationship or by threats or fear when the  
20 defendant was otherwise unlikely to commit  
21 such an offense.

22 **SEC. 8. EMERGENCY AUTHORITY FOR UNITED STATES SEN-**  
23 **TENCING COMMISSION.**

24 The United States Sentencing Commission shall—

25 (1) promulgate the guidelines, policy state-  
26 ments, or amendments provided for in this Act as

1 soon as practicable, and in any event not later than  
2 90 days after the date of enactment of this Act, in  
3 accordance with the procedure set forth in section  
4 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994  
5 note), as though the authority under that Act had  
6 not expired; and

7 (2) pursuant to the emergency authority pro-  
8 vided under paragraph (1), make such conforming  
9 amendments to the Federal sentencing guidelines as  
10 the Commission determines necessary to achieve  
11 consistency with other guideline provisions and ap-  
12 plicable law.

13 **SEC. 9. REPORT ON EFFECTIVENESS OF DRUG COURTS.**

14 (a) IN GENERAL.—Not later than 1 year after the  
15 date of enactment of this Act, the Comptroller General  
16 of the United States shall submit to Congress a report  
17 analyzing the effectiveness of drug court programs receiv-  
18 ing funds under the drug court grant program under part  
19 EE of title I of the Omnibus Crime Control and Safe  
20 Streets Act of 1968 (42 U.S.C. 3797–u et seq.).

21 (b) CONTENTS.—The report submitted under sub-  
22 section (a) shall—

23 (1) assess the efforts of the Department of Jus-  
24 tice to collect data on the performance of federally  
25 funded drug courts;



1           (2) address the effect of drug courts on recidi-  
2           vism and substance abuse rates;

3           (3) address any cost benefits resulting from the  
4           use of drug courts as alternatives to incarceration;

5           (4) assess the response of the Department of  
6           Justice to previous recommendations made by the  
7           Comptroller General regarding drug court programs;  
8           and

9           (5) make recommendations concerning the per-  
10          formance, impact, and cost-effectiveness of federally  
11          funded drug court programs.

12 **SEC. 10. UNITED STATES SENTENCING COMMISSION RE-**  
13 **PORT ON IMPACT OF CHANGES TO FEDERAL**  
14 **COCAINE SENTENCING LAW.**

15          Not later than 5 years after the date of enactment  
16 of this Act, the United States Sentencing Commission,  
17 pursuant to the authority under sections 994 and 995 of  
18 title 28, United States Code, and the responsibility of the  
19 United States Sentencing Commission to advise Congress  
20 on sentencing policy under section 995(a)(20) of title 28,  
21 United States Code, shall study and submit to Congress  
22 a report regarding the impact of the changes in Federal

1 sentencing law under this Act and the amendments made  
2 by this Act.

Passed the Senate March 17, 2010.

Attest: NANCY ERICKSON,  
*Secretary.*