

One Hundred Eleventh Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the fifth day of January, two thousand and ten*

An Act

To restore fairness to Federal cocaine sentencing.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fair Sentencing Act of 2010".

SEC. 2. COCAINE SENTENCING DISPARITY REDUCTION.

(a) CSA.—Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) is amended—

(1) in subparagraph (A)(iii), by striking "50 grams" and inserting "280 grams"; and

(2) in subparagraph (B)(iii), by striking "5 grams" and inserting "28 grams".

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

(1) in paragraph (1)(C), by striking "50 grams" and inserting "280 grams"; and

(2) in paragraph (2)(C), by striking "5 grams" and inserting "28 grams".

SEC. 3. ELIMINATION OF MANDATORY MINIMUM SENTENCE FOR SIMPLE POSSESSION.

Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended by striking the sentence beginning "Notwithstanding the preceding sentence,".

SEC. 4. INCREASED PENALTIES FOR MAJOR DRUG TRAFFICKERS.

(a) INCREASED PENALTIES FOR MANUFACTURE, DISTRIBUTION, DISPENSATION, OR POSSESSION WITH INTENT TO MANUFACTURE, DISTRIBUTE, OR DISPENSE.—Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)) is amended—

(1) in subparagraph (A), by striking "\$4,000,000", "\$10,000,000", "\$8,000,000", and "\$20,000,000" and inserting "\$10,000,000", "\$50,000,000", "\$20,000,000", and "\$75,000,000", respectively; and

(2) in subparagraph (B), by striking "\$2,000,000", "\$5,000,000", "\$4,000,000", and "\$10,000,000" and inserting "\$5,000,000", "\$25,000,000", "\$8,000,000", and "\$50,000,000", respectively.

(b) INCREASED PENALTIES FOR IMPORTATION AND EXPORTATION.—Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

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

(2) in paragraph (2), by striking “\$2,000,000”, “\$5,000,000”, “\$4,000,000”, and “\$10,000,000” and inserting “\$5,000,000”, “\$25,000,000”, “\$8,000,000”, and “\$50,000,000”, respectively.

SEC. 5. ENHANCEMENTS FOR ACTS OF VIOLENCE DURING THE COURSE OF A DRUG TRAFFICKING OFFENSE.

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines to ensure that the guidelines provide an additional penalty increase of at least 2 offense levels if the defendant used violence, made a credible threat to use violence, or directed the use of violence during a drug trafficking offense.

SEC. 6. INCREASED EMPHASIS ON DEFENDANT'S ROLE AND CERTAIN AGGRAVATING FACTORS.

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines to ensure an additional increase of at least 2 offense levels if—

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

(2) the defendant maintained an establishment for the manufacture or distribution of a controlled substance, as generally described in section 416 of the Controlled Substances Act (21 U.S.C. 856); or

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

(B) the offense involved 1 or more of the following super-aggravating factors:

(i) The defendant—

(I) used another person to purchase, sell, transport, or store controlled substances;

(II) used impulse, fear, friendship, affection, or some combination thereof to involve such person in the offense; and

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

(ii) The defendant—

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

(II) knowingly involved a person under the age of 18 years, a person over the age of 64 years, or a pregnant individual in drug trafficking;

(III) knowingly distributed a controlled substance to an individual who was unusually vulnerable due to physical or mental condition, or who was particularly susceptible to criminal conduct; or

(IV) knowingly involved an individual who was unusually vulnerable due to physical or mental condition, or who was particularly susceptible to criminal conduct, in the offense.

(iii) The defendant was involved in the importation into the United States of a controlled substance.

(iv) The defendant engaged in witness intimidation, tampered with or destroyed evidence, or otherwise obstructed justice in connection with the investigation or prosecution of the offense.

(v) The defendant committed the drug trafficking offense as part of a pattern of criminal conduct engaged in as a livelihood.

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

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and policy statements to ensure that—

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

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

(A) otherwise qualifies for a minimal role adjustment under the guidelines and had a minimum knowledge of the illegal enterprise;

(B) was to receive no monetary compensation from the illegal transaction; and

(C) was motivated by an intimate or familial relationship or by threats or fear when the defendant was otherwise unlikely to commit such an offense.

SEC. 8. EMERGENCY AUTHORITY FOR UNITED STATES SENTENCING COMMISSION.

The United States Sentencing Commission shall—

(1) promulgate the guidelines, policy statements, or amendments provided for in this Act as soon as practicable, and in any event not later than 90 days after the date of enactment of this Act, in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note), as though the authority under that Act had not expired; and

(2) pursuant to the emergency authority provided under paragraph (1), make such conforming amendments to the Federal sentencing guidelines as the Commission determines necessary to achieve consistency with other guideline provisions and applicable law.

SEC. 9. REPORT ON EFFECTIVENESS OF DRUG COURTS.

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

(b) **CONTENTS.**—The report submitted under subsection (a) shall—

(1) assess the efforts of the Department of Justice to collect data on the performance of federally funded drug courts;

(2) address the effect of drug courts on recidivism and substance abuse rates;

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

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

(5) make recommendations concerning the performance, impact, and cost-effectiveness of federally funded drug court programs.

**SEC. 10. UNITED STATES SENTENCING COMMISSION REPORT ON
IMPACT OF CHANGES TO FEDERAL COCAINE SENTENCING
LAW.**

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

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*