

## **A BRIEF HISTORY OF CRACK COCAINE SENTENCING LAWS**

**1984:** After expressing concerns that federal sentences are inconsistent, Congress passes the Sentencing Reform Act, which abolishes parole and creates the U.S. Sentencing Commission (USSC), tasked with writing mandatory federal sentencing guidelines for courts to follow.

**June 19, 1986:** College basketball star Len Bias dies from a powder cocaine overdose while celebrating his selection as the number one draft pick by the Boston Celtics in the NBA Draft. Many in the public and in Congress mistakenly believe his death is the result of a crack cocaine overdose. His death and fears of a crack cocaine epidemic lead Congress to create harsh punishments to win the “War on Drugs” and end the crack epidemic plaguing urban centers.

**1986:** At the height of election season and with virtually no study or review, Congress passes the Anti-Drug Abuse Act of 1986. It creates mandatory minimum sentences for drug trafficking crimes, including the especially harsh 100-to-1 crack-powder disparity. Five grams of crack and 500 grams of powder cocaine now trigger a 5-year mandatory minimum; 50 grams of crack and 5 kilograms of powder cocaine trigger a 10-year mandatory minimum. The USSC also adopts the 100-to-1 ratio in the federal sentencing guidelines for crack offenses. Crack was punished far more harshly than powder cocaine because of unsupported fears including:

- Crack was more dangerous and addictive to users than powder cocaine
- Prenatal crack exposure was more harmful than exposure to other drugs and led to a proliferation of “crack babies”
- Crack trafficking involved more guns and violence than powder cocaine trafficking.

**1988:** Congress enacts a 5-year mandatory minimum for first-time simple possession of 5 grams of crack cocaine. No other first-time simple possession drug offense requires prison time or a mandatory minimum sentence.

**1995:** The USSC issues its first research report to Congress on crack cocaine, finding that because over 80% of crack offenders are black, and because the 100-to-1 ratio results in unduly high sentences, sentences are harsher for minorities and create a public perception that the criminal justice system is unfair and inconsistent. The USSC tries to amend the guidelines to equalize the amount of crack and powder cocaine that trigger particular guideline sentences. Congress rejects the amendment.

**1997:** The USSC issues a second report to Congress, offering a range of options for revising the 100-to-1 disparity.

**2002:** The USSC issues a third report, debunking flawed misconceptions about the effects of crack cocaine on its users and recommending that Congress increase crack cocaine quantities to 25 grams for the 5-year mandatory minimum and 250 grams for the 10-year mandatory

minimum. The Commission also calls on Congress to repeal the mandatory minimum for simple possession of crack. The report also finds that:

- Current crack penalties exaggerate the harmfulness of crack, which is pharmacologically identical to powder cocaine
- The negative effects of prenatal exposure to crack are identical to those of prenatal exposure to powder cocaine
- Current crack penalties over-punish low-level crack offenders and apply to too many low-level offenders and street-level dealers, rather than major traffickers
- The amount of violence associated with crack was overstated, and the current sentences unfairly punish all crack offenders as if they had used violence or weapons
- The 100-to-1 disparity results in overly harsh sentences for crack offenders and produces a racial disparity in sentencing, as 80% of those convicted of crack offenses are black.

**2005:** The U.S. Supreme Court decides *United States v. Booker*, ruling that the federal sentencing guidelines are advisory and no longer mandatory.

**2007:** The USSC issues a fourth report to Congress, calling for new legislation increasing the quantities of crack cocaine that trigger the 5- and 10-year mandatory minimums, decreasing the 100-to-1 drug quantity ratio, and repealing the 5-year mandatory minimum for simple possession of crack.

**November 1, 2007:** A USSC amendment to the sentencing guidelines reduces crack sentences issued under the guidelines by an average of 15 months.

**December 10, 2007:** The Supreme Court decides, in *Kimbrough v. United States*, that a sentencing judge may depart from the federal sentencing guideline sentence for crack cocaine if the court disagrees with the disparity between crack and powder cocaine sentences contained in the guidelines.

**March 2008:** The USSC's crack guideline amendment is made retroactive, reducing sentences an average of 26 months for approximately 16,500 crack offenders in federal prisons.

**March 17, 2010:** The Senate unanimously passes S. 1789, the Fair Sentencing Act of 2010, which creates an 18-to-1 ratio between crack and powder cocaine. Under the bill, 28 grams of crack and 500 grams of powder cocaine trigger the five-year mandatory minimum, and 280 grams of crack and 5 kilograms of powder cocaine trigger the 10-year mandatory minimum. The bill also repeals the five-year mandatory minimum sentence for simple possession of crack cocaine. This is the first time since the Nixon Administration that a mandatory minimum has been repealed.

**July 28, 2010:** The House of Representative passes the Fair Sentencing Act of 2010. Passage of the bill includes the first repeal of a mandatory minimum sentencing law since 1970. The bill impacts approximately 3,000 crack offenders sentenced in federal prisons each year and reduces

crack sentences by an average of 27 months. It is projected to save over 1,500 prison beds and \$42 million in the next five years. The bill does not benefit people who have already committed crack cocaine offenses.

**August 3, 2010:** President Barack Obama signs the Fair Sentencing Act of 2010 (FSA) into law. The FSA instructs the USSC to amend the crack cocaine guidelines to reflect the law's new 18-to-1 crack-powder ratio.

**September 2, 2010:** The USSC proposes an emergency temporary amendment to the sentencing guidelines, which would alter the crack cocaine drug quantities so that they reflect the 18-to-1 ratio created by the FSA.

**November 1, 2010:** The USSC's temporary emergency amendment conforming the crack guidelines to the FSA goes into effect, benefiting all federal crack offenders sentenced on or after this date.

**January 19, 2011:** The USSC proposes a permanent guideline amendment that would conform the crack guidelines to the FSA's new ratio of 18-to-1.

**May 31, 2011:** The USSC releases the findings of a recidivism study of those who benefited from the 2007 retroactive crack guideline amendment. The Commission studied two groups: a group of 848 crack offenders who received sentence reductions based on the 2007 retroactive crack amendment, and a comparison group of 484 crack offenders who were released before the 2007 amendment went into effect and served their full sentences (minus good time credit earned). The USSC found that 30.4 percent of those who benefited from the 2007 retroactive crack amendment reoffended within two years of release; for those released without any benefit from the amendment, the rate was 32.6 percent. This difference in recidivism rates is not statistically significant. Among those who reoffended in the 2007 group, most re-arrests were for drug possession or distribution.

**June 1, 2011:** The USSC holds a public hearing to gather testimony concerning whether the proposed permanent FSA-conforming amendment should be made retroactive.

**June 30, 2011:** The USSC votes in favor of making the proposed permanent FSA-conforming guideline amendment retroactive, so that the revised guidelines apply to federal crack offenders sentenced before November 1, 2010.

**November 1, 2011:** The USSC's permanent FSA-conforming amendment goes into effect. It is projected to reduce sentences by an average of 37 months for over 12,000 federal crack offenders. The FSA's changes to mandatory minimum crack penalties remain non-retroactive.