



September 8, 2008

VIA EMAIL pubaffairs@ussc.gov

United State Sentencing Commission
One Columbus Circle, NE, Suite 2-500, South Lobby
Washington, DC 20002-8002

Attention: Public Affairs – Proposed Priorities Public Comment

Dear Commissioners:

On behalf of the American Civil Liberties Union (ACLU), and its hundreds of thousands of members, activists and fifty-three affiliates nationwide, we submit these comments pursuant to the U.S. Sentencing Commission's request for public comment, as noted in the Federal Register on August 8, regarding the possible priority policy issues for the amendment cycle ending on May 1, 2009. We applaud the Commission's proposal that continuation of its work on cocaine sentencing policy be one of the Commission's priority issues for this amendment cycle.

The Commission has identified a list of eight potential priorities. Because eliminating the disparity in sentencing between crack and powder cocaine is of critical importance to the ACLU, we would like to focus our comments on proposal Number 4:

Continuation of its work with Congress and other interested parties on cocaine sentencing policy to implement the recommendations set forth in the Commission's 2002 and 2007 reports to Congress, both entitled Cocaine and Federal Sentencing Policy, and to develop appropriate guideline amendments in response to any related legislation[.]

The Commission should be commended for the work it has done over more than a decade to address the 100:1 crack/powder cocaine sentencing disparity – consistently reporting to Congress that the disparity remains unjustified. We support the Commission's proposal to continue to focus on ways in which the disparity can be rectified.

Due in large part to the Commission's important work on the subject, last year saw more progress in addressing the unequal nature of cocaine sentencing disparity than any year since Congress enacted the law in 1986. The amendments to the federal sentencing guidelines that the Commission promulgated in May 2007 and took effect in November 2007, helped to bring the guideline ranges for crack cocaine federal sentences in line with the mandatory minimums prescribed by statute. Additionally, the Commission's decision in December 2007 to apply

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the guideline changes retroactively will make nearly 20,000 crack offenders eligible for sentencing reductions over the next three decades. Last year also saw the Supreme Court's decision in *Kimbrough v. United States*, permitting judges to exercise discretion in sentencing below the federal guidelines for crack cocaine offenses. Taken together, the last year was one marked by steady progress towards eliminating the unfair and overly harsh cocaine sentencing structure.

In its 2002 and 2007 cocaine sentencing reports, the Commission took bold steps to bring much needed reform. The Commission's proposal to prioritize this issue will continue that momentum. The Commission's ongoing work will highlight the need for congressional action in order to eliminate the 100:1 federal statutory sentencing disparity and harsh mandatory minimums for low-level crack cocaine offenses.

As this body has noted, revising the crack cocaine thresholds would do more than any other single policy change to dramatically improve the fairness of the federal sentencing system.¹ Correcting this disparity could help to increase the sense of trust in our criminal justice system by removing a harsh penalty imposed disproportionately and unfairly on the African American community. Passing legislation to address the disparity in the upcoming Congress will be a priority for ACLU, and we welcome the Commission's proposal to develop appropriate guideline amendments in response to any related legislation.

Thank you for your consideration of this important issue. The ACLU commends the Commission's recommendation that cocaine sentencing policy remain a priority during the next amendment cycle.

Sincerely,



Caroline Fredrickson
Director



Deborah J. Vagins
Legislative Counsel

¹ See, e.g., U.S. SENTENCING COMMISSION, FIFTEEN YEARS OF GUIDELINES SENTENCING 132 (2004).