U.S. Department of Justice
Office of Legislative Affairs

Crime - Crack Cocaine

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Newt Gingrich
Speaker
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed is a legislative proposal to disapprove certain sentencing guideline amendments recently submitted to Congress by the United States Sentencing Commission for a 180-day review period. The amendments proposed for Congressional disapproval relate to two areas -- (1) equalization of cocaine base (crack) and cocaine powder quantities for drug trafficking penalties, and (2) revision of the guidelines applicable to money laundering and transactions in property derived from unlawful activity. These sentencing guideline amendments will take effect November 1, 1995, unless an Act of Congress provides otherwise.

The legislative proposal would disapprove and prevent the taking effect of the two sentencing guideline amendments described above. The guideline amendments relating to crack, which were adopted by a divided Sentencing Commission, would drastically reduce crack guideline penalties without recognizing the significant differences between crack and cocaine powder. Crack is a more dangerous and harmful substance than cocaine powder for a number of reasons. It is the more psychologically addictive of the two substances through the most common routes of administration. Additionally, the open-air street markets and crack houses used for the distribution of crack, which can be broken down and packaged into very small and inexpensive quantities for distribution to the most vulnerable members of society, contribute heavily to the deterioration of neighborhoods and communities. Finally, the guideline amendments relating to crack are inconsistent with current mandatory minimum penalties.

The Sentencing Commission's amendments to the money laundering guidelines are sweeping in nature and would substantially lower the penalties for many serious money laundering offenses despite the fact that Congress has treated money laundering as a significant offense subject to 10- or 20-year maximum penalties. The amendments would produce reductions in sentence with respect to the laundering of proceeds of both financial and drug offenses.

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We urge early consideration of this important legislative proposal to prevent these unsatisfactory sentencing guideline amendments from taking effect. The Office of Management and Budget has advised that the submission of this legislative proposal is consistent with the program of the President.

Sincerely,

Kent R. Markus
Acting Assistant Attorney General

Enclosure

A BILL

To disapprove sentencing guideline amendments relating to cocaine base and money laundering.

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

SEC. 1. DISAPPROVAL OF AMENDMENTS RELATING TO EQUALIZATION OF CRACK AND COCAINE POWDER QUANTITIES.

In accordance with section 994(p) of title 28, United States Code, Amendment number 5 of the "Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary," submitted by the United States Sentencing Commission to Congress on May 1, 1995, is hereby disapproved and shall not take effect to the extent it--

(1) amends §2D1.1(c)(1) through (14) of the sentencing guidelines;

(2) inserts the following sentence in §2D1.1(c) of the sentencing guidelines: "'Cocaine,' for the purposes of this guideline, includes cocaine hydrochloride, cocaine base, and crack cocaine.";

(3) deletes "1 gm of Cocaine Base ('Crack') = 20 kg of marihuana" from the Commentary to §2D1.1 of the sentencing guidelines captioned "Application Notes" in Note 10 in the subdivision captioned "Cocaine and Other Schedule I and II Stimulants"; and

(4) provides reasons for the amendment, except the reasons set forth in the seventh paragraph of the discussion entitled "Reason for Amendment".

SEC. 2. DISAPPROVAL OF AMENDMENTS RELATING TO MONEY LAUNDERING AND TRANSACTIONS IN PROPERTY DERIVED FORM UNLAWFUL ACTIVITY.

In accordance with section 994(p) of title 28, United States Code, Amendment number 18 of the "Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary," submitted by the United States Sentencing Commission to Congress on May 1, 1995, is hereby disapproved and shall not take effect.

ANALYSIS

On May 1, 1995, the United States Sentencing Commission submitted to Congress amendments to the sentencing guidelines, policy statements, and official commentary in a number of areas. Such amendments will take effect November 1, 1995, unless an Act of Congress provides otherwise. The bill would overturn amendments relating to two of the areas — (1) equalization of cocaine base and cocaine powder quantities for drug trafficking penalties, and (2) revision of the guidelines applicable to money laundering and transactions in property derived from unlawful activity.

By way of background, the United States Sentencing Commission has the power to promulgate amendments to the sentencing guidelines. However, the Commission must submit such amendments to Congress for at least a 180-day review period. Sentencing Guideline amendments take effect no later than November 1 of the calendar year in which submitted, "except to the extent that . . . the amendment is otherwise modified or disapproved by Act of Congress." 28 U.S.C. §994(p). The bill would implement this provision by disapproving the Sentencing Commission's amendments with respect to cocaine base and money laundering.

The sentencing guideline amendments relating to cocaine base (usually known as "crack"), which were adopted by a 4-3 vote of the Commission, would drastically reduce crack penalties without

recognizing the significant differences between crack and cocaine hydrochloride (cocaine powder). Crack is a more dangerous and harmful substance than cocaine powder for a number of reasons. The most common routes of administration of the two drugs cause crack to be the more psychologically addictive of the substances, particularly because smoking crack produces quicker, more intense, and shorter-lasting effects than snorting cocaine powder. Identifiable social and behavioral changes occur much more quickly with the use of crack than with the use of cocaine powder. Crack can also be broken down and packaged into very small and inexpensive quantities for distribution and is thereby marketed to the most vulnerable members of society, including those of lower socioeconomic status and youth. Additionally, the open-air street markets and crack houses used for the distribution of crack contribute heavily to the deterioration of neighborhoods and communities. Finally, the present crack market is associated with violent crime to a greater extent than that of cocaine powder.

Despite these realities, the Sentencing Commission has taken two steps to lower crack penalties to precariously low levels. First, the Commission has recommended that Congress eliminate the differential treatment of crack and cocaine powder in the mandatory minimum penalties currently provided by statute. In addition, the Commission has submitted an amendment of the sentencing guidelines to treat crack and cocaine powder alike under the guidelines, regardless of whether Congress first

revises the statutory minimum penalties. As a result, an offender convicted of distributing 50 grams of crack (about 500 doses), for whom the relevant statute imposes a mandatory minimum 10-year term of imprisonment, would face a guideline sentence of just 21-27 months of imprisonment. If such an offender accepted responsibility for his or her offense, the sentencing guideline range would be 12-18 months of imprisonment. If the court found that such an offender had also played a minimal role in the offense, the sentencing guideline range would be just 4-10 months of imprisonment, which could be satisfied by probation with conditions of confinement, such as home detention. Offenses now subject to a 5-year mandatory minimum prison term (involving at least 5 grams of crack) would potentially be subject to a sentencing guideline range of just 0-6 months of imprisonment if the defendant accepted responsibility for the offense and were a minor player.

From the above it can be seen that if Congress adopts the Commission's recommendation to treat crack and cocaine powder alike for purposes of the mandatory minimum penalties, some offenses now subject to a 5- or 10-year mandatory minimum prison term will potentially result in a sentence involving no required prison term at all.

Even if Congress does not adopt the Commission's recommendation as to mandatory minimum penalties for crack, the sentencing guideline amendments the Commission has submitted create serious problems. The low guideline sentences bring about

inconsistency between the guidelines and the current statutory scheme, with the result that mandatory minimum sentences will override many guideline sentences and produce sharp cliffs in sentencing, as well as resentment among those subject to the statutory penalties. The sentencing guidelines should work in concert with, rather than in opposition to, mandatory minimum sentences. Moreover, the low guideline sentences will prevail in the case of crack offenders subject to the "safety-valve" exemption from mandatory minimum sentences, 18 U.S.C. §3553(f). The implementation of these low sentences for "safety-valve" defendants may also violate the statutory requirement that guidelines implementing the "safety-valve" must provide a guideline range in which the lowest term of imprisonment is at least 24 months for defendants who would have been subject to a mandatory minimum 5-year sentence. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, §80001(b)(1)(B). The drastic reduction in guideline sentences for crack will result in safety-valve sentences under §5C1.2 of the sentencing guidelines lower than 24 months in certain cases, as described above.

For the reasons set forth, Congress should disapprove the equalization of crack and cocaine powder sentences in the sentencing guidelines, as provided in section 1 of the proposed legislation. While Section 1 would result in the disapproval of those portions of sentencing guideline amendment number 5 that would equalize crack and cocaine powder trafficking penalties, it

would not affect other portions of the amendment. For example, the legislative proposal would not affect the portions of the amendment that provide enhanced sentences for the use or possession of a weapon in the case of any drug trafficking offense or that delete the definition of "cocaine base." Nor would the legislative proposal affect the amended guidelines' treatment of simple possession of crack in the same manner as simple possession of cocaine powder. (Of course, current mandatory minimum penalties pertaining to the simple possession of certain quantities of crack would continue to apply unless repealed by Congress.)

Without Congressional action disapproving the guidelines, the amendments will go into effect November 1, 1995. While the Department of Justice recognizes that some adjustment of the current penalty structure may be appropriate, any such adjustment must reflect the greater dangers associated with crack than cocaine powder.

Section 2 of the proposed legislation addresses sentencing guideline amendments submitted by the Sentencing Commission to Congress relating to money laundering and transactions in property derived form unlawful activity. The amendments were the product of intense lobbying by the white-collar defense bar to lower penalties for money laundering and related activity. The guideline amendments are sweeping in nature and would substantially lower the penalties for many serious money laundering offenses even though Congress has determined money

laundering to be a significant offense subject to 10- or 20-year maximum penalties (depending upon the offender's intent).

The amendments would produce reductions in sentence with respect to the laundering of proceeds of both financial offenses and drug offenses. For example, under the current guidelines an offender who launders $110,000 worth of proceeds of a fraud by engaging in a financial transaction knowing that the transaction is designed to conceal the source of the illegal funds (and is convicted of violating 18 U.S.C. §1956(a)(1)(B)(i)) would face a current guideline sentence of 37-46 months of imprisonment under §2S1.1 of the sentencing guidelines. Under the amended guideline submitted to Congress, the guideline range would be just 21-27 months of imprisonment. An offender who commits a similar offense involving $110,000 worth of illegal drug proceeds would face a current guideline sentence of 51-63 months of imprisonment. Under the recently submitted guideline amendments the guideline sentence would be just 33-41 months of imprisonment.

The Commission's guideline changes appear to respond in part to the class of money laundering cases in which the money laundering activity is not extensive, including "receipt and deposit" cases -- those in which the money laundering conduct is limited to depositing the proceeds of unlawful activity in a financial institution account identifiable to the person who committed the underlying offense. While the application of the current guidelines to receipt-and-deposit cases, as well as to

certain other cases that do not involve aggravated money laundering activity, may be problematic -- and the Department of Justice proposed to the Sentencing Commission a sentencing guideline amendment that would have addressed this problem while preserving appropriately tough sentences for serious money laundering activities -- past sentencing anomalies arising from relatively few cases do not justify a sweeping downward adjustment in the money laundering guidelines.

The broad changes in money laundering sentences reflected in the Commission's guideline amendments, if allowed to stand, will send a dangerous message that money laundering associated with drug and other serious crimes is not viewed as the grave offense it once was.