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CONGRESSWOMAN SHEILA JACKSON LEE, OF TEXAS

STATEMENT BEFORE THE

JUDICIARY SUBCOMMITTEE ON
CRIME, TERRORISM, AND HOMELAND SECURITY

“HEARING ON CRACKED JUSTICE – ADDRESSING THE UNFAIRNESS IN
COCAINE SENTENCING”

FEBRUARY 26, 2008

Thank you, Mr. Chairman, for your leadership in convening today’s very important hearing on the disparity in sentencing for possession of powder cocaine and the simple possession of crack cocaine. I would also like to thank the ranking member, the Honorable Louie Gohmert, and welcome our panelists. I look forward to their testimony.

In December 2007, I introduced H.R. 4545 “The Drug Sentencing Reform and Cocaine Kingpin Trafficking Act of 2007” so that we may finally eliminate the unjust and unequal federal crack/cocaine sentencing disparity in America. The time has come, to finally right the wrongs created with the original drug sentencing legislation in 1986.

As a senior Member of the Full Judiciary Committee and a member of the Subcommittee on Crime, I have always been an outspoken advocate for justice and equality in our criminal justice system. For the last 21 years, we have allowed people who have committed similar crimes to serve drastically different sentences for what we now know are discredited and unsubstantiated differences. For the last 21 years, the way we have punished low-level crimes for crack cocaine and powder cocaine have been unjust and unequal.

In 1986, Congress linked mandatory minimum penalties to different drug quantities, which were intended to serve as proxies for identifying offenders who were “serious” traffickers (managers of retail drug trafficking) and “major” traffickers (manufacturers or the kingpins who headed drug organizations).

Since 1986, the severity of punishment between those sentenced for crack cocaine offenses and powder cocaine offenses has been extremely disproportionate, 100 to 1 ratio to be exact. This has resulted in not only an unequal and unjust criminal justice system, but also a prison system which is overflowing and overburdened with individuals who were not in actuality major drug traffickers.

The U.S. Sentencing Commission recently issued a report that

unanimously and strongly urged Congress to: (1) act swiftly to increase the threshold quantities of crack necessary to trigger the five- and ten-year mandatory minimum sentences so that federal resources are focused on major drug traffickers as intended in the original 1986 legislation; and (2) repeal the mandatory minimum penalty sentence for simple possession of crack, the only controlled substance for which there is a mandatory minimum for a first time offense of simple possession. The Sentencing Commission also unanimously rejected any effort to increase penalties for powder since there is no evidence to justify any such upward adjustment.

Moreover, numerous reputable studies comparing the usage of powder and crack cocaine have shown that there is little difference between the two forms of the drug, which fundamentally undermines the current quantity-based sentencing disparity.

Accordingly, this legislation based on these recommendations and after the U.S. Supreme Court released two opinions in 7-2 decisions in early December 2007, restoring the broad authority of federal district court judges to sentence outside the Sentencing Guidelines range and impose shorter and more reasonable prison sentences for persons convicted of offenses involving crack cocaine. In the most high-profile of the cases, Kimbrough v. United States, the Court held that sentencing judges could sentence crack

cocaine defendants below the Guidelines range to reflect a view that crack sentences have been set disproportionately high in comparison to cocaine sentences.

Additionally, the U.S. Sentencing Commission has been urging Congress to drop its 100-1 crack-to-cocaine ratio approach, and the Court held that judges may take into account the evolving view that both drugs merit equal treatment when calculating prison time.

It is time for Congress to act. This bill will eliminate the disparities in cocaine sentencing and the current mandatory minimum for simple possession. In addition, this bill will increase emphasis on certain aggravating and mitigating factors, create an offender drug treatment incentive grant program and increase penalties for major drug traffickers. This bill complements the bill recently introduced in the Senate by Senator Biden. Most importantly, this resolution will enact the measures that the U.S. Sentencing Commission has requested from Congress.

This legislation will also fundamentally change the way we punish drug traffickers. This legislation dramatically increases the monetary punishment for those convicted of trafficking drugs at the same time creates grants for states to create incentive based treatment programs for low-level drug offenders.

Blatant and unjust inequality under the law must end. This bill will ensure that those individuals who have violated the law will be punished fairly relative to the punishment. We cannot allow this injustice to continue, and I urge you to support this timely resolution which is supported by the Open Society Policy Center, the Sentencing Project, the ACLU, the American Bar Association, and the Drug Policy Alliance. I also want to thank Senator Biden for introducing the companion to this legislation in the Senate earlier this year.

I would be remiss if I did not mention H.R. 261 that I introduced early last year. H.R. 261, is the “Federal Prison Bureau Nonviolent Offender Relief Act of 2007”. This Bill provides for the early release of non-violent offenders who have attained the age of at least 45 years of age, have never been convicted of a violent crime, have never escaped or attempted to escape from incarceration, and have not engaged in any violation, involving violent conduct, of institutional disciplinary regulations.

H.R. 261 seeks to ensure that in affording offenders a second chance to turn around their lives and contribute to society, ex-offenders are not too old to take advantage of a second chance to redeem themselves. A secondary benefit of H.R. 261 is that it would relieve some of the strain on federal, state, and local government budgets by reducing considerably government

expenditures on warehousing prisoners.

The number of federal inmates has grown from just over 24,000 in 1980 to 173,739 in 2004. The cost to incarcerate these individuals has risen from \$330 million to \$4.6 billion since 2004. At a time when tight budgets have forced many states to consider the early release of hundreds of inmates to conserve tax revenue and when our nation's Social Security system is in danger of being totally privatized, early release is a common-sense option to raise capital.

There are more people in the prisons of America than there are residents in states of Alaska, North Dakota, and Wyoming combined. Over one million people have been warehoused for nonviolent, often petty crimes.

The European Union, with a population of 370 million, has one-sixth the number of incarcerated persons as we do, and that includes violent and nonviolent offenders. This is one third the number of prisoners which America, a country with 70 million fewer people, incarcerates for nonviolent offenses.

To be sure, both of these pieces of legislation will bring much needed reform to our criminal justice system. We must act with urgency and the time is now.

Thank you, Mr. Chairman; I yield the remainder of my time.

