

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3725

To reduce the disparity in punishment between crack and powder cocaine offenses, to more broadly focus the punishment for drug offenders on the seriousness of the offense and the culpability of the offender, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 25, 2006

Mr. SESSIONS (for himself, Mr. PRYOR, Mr. CORNYN, and Mr. SALAZAR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To reduce the disparity in punishment between crack and powder cocaine offenses, to more broadly focus the punishment for drug offenders on the seriousness of the offense and the culpability of the offender, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Drug Sentencing Reform Act of 2006”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—REDUCTION OF DISPARITY IN SENTENCING BETWEEN  
CRACK AND POWDER COCAINE

Sec. 101. Reduction in disparity in sentencing between crack and powder cocaine.

Sec. 102. Sentencing guideline conforming changes and enhancements for acts of violence during the course of a drug trafficking offense.

TITLE II—INCREASED EMPHASIS ON THE DEFENDANT’S ROLE  
IN THE OFFENSE

Sec. 201. Increase in sentence for leadership role in drug offense.

Sec. 202. Limit on sentence when defendant has lesser role in the offense.

Sec. 203. Elderly, nonviolent prisoner pilot program.

Sec. 204. Emergency amendment authority; effective date.

1 **TITLE I—REDUCTION OF DIS-**  
2 **PARITY IN SENTENCING BE-**  
3 **TWEEN CRACK AND POWDER**  
4 **COCAINE**

5 **SEC. 101. REDUCTION IN DISPARITY IN SENTENCING BE-**  
6 **TWEEN CRACK AND POWDER COCAINE.**

7 (a) AMENDMENT OF THE CONTROLLED SUBSTANCES  
8 ACT.—Section 401 of the Controlled Substances Act (21  
9 U.S.C. 841) is amended as follows:

10 (1) TEN-YEAR MANDATORY MINIMUM.—

11 (A) DECREASE IN AMOUNT OF POWDER  
12 COCAINE NECESSARY TO TRIGGER MANDATORY  
13 MINIMUM.—In subsection (b)(1)(A)(ii) by strik-  
14 ing “5 kilograms” and inserting “4 kilograms”.

15 (B) INCREASE IN AMOUNT OF CRACK CO-  
16 CAINE NECESSARY TO TRIGGER MANDATORY  
17 MINIMUM.—In subsection (b)(1)(A)(iii) by

1 striking “50 grams” and inserting “200  
2 grams”.

3 (2) FIVE-YEAR MANDATORY MINIMUM.—

4 (A) DECREASE IN AMOUNT OF POWDER  
5 COCAINE NECESSARY TO TRIGGER MANDATORY  
6 MINIMUM.—In subsection (b)(1)(B)(ii) by strik-  
7 ing “500 grams” and inserting “400 grams”.

8 (B) INCREASE IN AMOUNT OF CRACK CO-  
9 CAINE NECESSARY TO TRIGGER MANDATORY  
10 MINIMUM.—In subsection (b)(1)(B)(iii) by  
11 striking “5 grams” and inserting “20 grams”.

12 (b) AMENDMENT OF THE CONTROLLED SUBSTANCES  
13 IMPORT AND EXPORT ACT.—Section 1010 of the Con-  
14 trolled Substances Import and Export Act (21 U.S.C.  
15 960) is amended as follows:

16 (1) TEN-YEAR MANDATORY MINIMUM.—

17 (A) DECREASE IN AMOUNT OF POWDER  
18 COCAINE NECESSARY TO TRIGGER MANDATORY  
19 MINIMUM.—In subsection (b)(1)(B) by striking  
20 “5 kilograms” and inserting “4 kilograms”.

21 (B) INCREASE IN AMOUNT OF CRACK CO-  
22 CAINE NECESSARY TO TRIGGER MANDATORY  
23 MINIMUM.—In subsection (b)(1)(C) by striking  
24 “50 grams” and inserting “200 grams”.

25 (2) FIVE-YEAR MANDATORY MINIMUM.—

1 (A) DECREASE IN AMOUNT OF POWDER  
 2 COCAINE NECESSARY TO TRIGGER MANDATORY  
 3 MINIMUM.—In subsection (b)(2)(B) by striking  
 4 “500 grams” and inserting “400 grams”.

5 (B) INCREASE IN AMOUNT OF CRACK CO-  
 6 CAINE NECESSARY TO TRIGGER MANDATORY  
 7 MINIMUM.—In subsection (b)(2)(C) by striking  
 8 “5 grams” and inserting “20 grams”.

9 (c) CONFORMING CHANGE TO PENALTY FOR POSSES-  
 10 SION.—Section 404(a) of the Controlled Substances Act  
 11 (21 U.S.C. 844(a)) is amended in the fifth sentence by  
 12 striking “5 years” and inserting “1 year”.

13 **SEC. 102. SENTENCING GUIDELINE CONFORMING CHANGES**  
 14 **AND ENHANCEMENTS FOR ACTS OF VIO-**  
 15 **LENCE DURING THE COURSE OF A DRUG**  
 16 **TRAFFICKING OFFENSE.**

17 Pursuant to its authority under section 994 of title  
 18 28, United States Code, and in accordance with this sec-  
 19 tion, the United States Sentencing Commission shall re-  
 20 view and amend the Federal sentencing guidelines and  
 21 policy statements to ensure—

22 (1) that guideline offense levels based upon the  
 23 quantity of powder cocaine and crack cocaine are  
 24 consistent with the amendments made by section  
 25 101; and

1           (2) that the guidelines provide an appropriate  
 2 additional penalty increase of from 2 to 8 offense  
 3 levels if the defendant used violence, made a credible  
 4 threat to use violence, directed the use or threatened  
 5 use of violence, or possessed a firearm, or other dan-  
 6 gerous weapon, during the course of a drug traf-  
 7 ficking offense.

8 **TITLE II—INCREASED EMPHASIS**  
 9 **ON THE DEFENDANT’S ROLE**  
 10 **IN THE OFFENSE**

11 **SEC. 201. INCREASE IN SENTENCE FOR LEADERSHIP ROLE**  
 12 **IN DRUG OFFENSE.**

13 Pursuant to its authority under section 994 of title  
 14 28, United States Code, and in accordance with this sec-  
 15 tion, the United States Sentencing Commission shall re-  
 16 view and amend the Federal sentencing guidelines and  
 17 policy statements to ensure an additional increase of at  
 18 least 2 offense levels if—

19           (1) the defendant, as an organizer, leader, man-  
 20 ager, or supervisor of drug trafficking activity, is  
 21 subject to an aggravating role enhancement under  
 22 the guidelines; and

23           (2) the offense involved 1 or more of the fol-  
 24 lowing super-aggravating factors—

25                   (A) the defendant—

1 (i) used another person to purchase,  
2 sell, transport, or store controlled sub-  
3 stances;

4 (ii) used impulse, fear, friendship, af-  
5 fection, or some combination thereof to in-  
6 volve such person in the offense;

7 (iii) and such person had a minimum  
8 knowledge of the illegal enterprise and was  
9 to receive little or no compensation from  
10 the illegal transaction;

11 (B) the defendant maintained an establish-  
12 ment for the manufacture or distribution of a  
13 controlled substance, as generally described in  
14 section 406 of the Controlled Substances Act  
15 (21 U.S.C. 856);

16 (C) the defendant—

17 (i) distributed a controlled substance  
18 to a person under the age of 18 years, a  
19 person over the age of 64 years, or a preg-  
20 nant individual; or

21 (ii) involved a person under the age of  
22 18 years, a person over the age of 64  
23 years, or a pregnant individual in drug  
24 trafficking;

1 (D) the defendant bribed, or attempted to  
2 bribe, a Federal, State, or local law enforce-  
3 ment official in connection with a drug traf-  
4 ficking offense;

5 (E) the defendant was involved in the im-  
6 portation into the United States of a controlled  
7 substance; or

8 (F) the defendant committed the drug  
9 trafficking offense as part of a pattern of crimi-  
10 nal conduct engaged in as a livelihood.

11 **SEC. 202. LIMIT ON SENTENCE WHEN DEFENDANT HAS**  
12 **LESSER ROLE IN THE OFFENSE.**

13 Pursuant to its authority under section 994 of title  
14 28, United States Code, and in accordance with this sec-  
15 tion, the United States Sentencing Commission shall re-  
16 view and amend, as appropriate, the Federal sentencing  
17 guidelines and policy statements to ensure that—

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

22 (2) there shall be an additional reduction of 2  
23 offense levels, if the defendant—

1 (A) otherwise qualifies for a minimal role  
 2 adjustment under the guidelines and had a min-  
 3 imum knowledge of the illegal enterprise;

4 (B) was to receive little or no compensa-  
 5 tion from the illegal transaction; and

6 (C) acted on impulse, fear, friendship, or  
 7 affection when the defendant was otherwise un-  
 8 likely to commit such an offense.

9 **SEC. 203. ELDERLY, NONVIOLENT PRISONER PILOT PRO-**  
 10 **GRAM.**

11 (a) DEFINITIONS.—In this section:

12 (1) CRIME OF VIOLENCE.—The term “crime of  
 13 violence” has the meaning given the term in section  
 14 16 of title 18, United States Code.

15 (2) DESIGNATED FACILITY.—The term “des-  
 16 ignated facility” means a Federal penitentiary des-  
 17 ignated by the Attorney General as appropriate for  
 18 the pilot program.

19 (3) DIRECTOR.—The term “Director” means  
 20 the Director of the Bureau of Prisons.

21 (4) ELIGIBLE PRISONER.—The term “eligible  
 22 prisoner” means a prisoner in the custody of the  
 23 Bureau of Prisons who—

24 (A) is not less than 65 years of age;



1 (B) is serving a term of imprisonment  
2 after conviction for an offense other than a  
3 crime of violence and has served the greater of  
4 10 years or  $\frac{1}{2}$  of the term of imprisonment;

5 (C) has not been convicted in the past of  
6 any Federal or State crime of violence;

7 (D) has not been determined by the Bu-  
8 reau of Prisons, on the basis of information the  
9 Bureau uses to make custody classifications,  
10 and in the sole discretion of the Bureau, to  
11 have a history of violence;

12 (E) has not escaped, or attempted to es-  
13 cape, from a Bureau of Prisons facility; and

14 (F) has not been determined by the Direc-  
15 tor, pursuant to the disciplinary system of the  
16 Bureau of Prisons, to have committed an in-  
17 fraction involving an act of violence.

18 (5) HOME DETENTION.—The term “home de-  
19 tention” has the same meaning given the term in the  
20 Federal Sentencing Guidelines, and includes deten-  
21 tion in a nursing home or other residential long-term  
22 care facility.

23 (6) PILOT PROGRAM.—The term “pilot pro-  
24 gram” means the pilot program carried out in ac-  
25 cordance with this section.

1           (7) TERM OF IMPRISONMENT.—The term “term  
2 of imprisonment” includes multiple terms of impris-  
3 onment ordered to run consecutively or concurrently,  
4 which shall be treated as a single, aggregate term of  
5 imprisonment for purposes of this section.

6           (b) PROGRAM ESTABLISHED.—

7           (1) IN GENERAL.—Notwithstanding section  
8 3624 of title 18, United States Code, or any other  
9 provision of law, the Director shall carry out a pilot  
10 program at 1 or more designated facilities, under  
11 which the Director shall, in accordance with para-  
12 graph (2), place each prisoner who is determined to  
13 be an eligible prisoner on home detention until the  
14 date on which the term of imprisonment to which  
15 the eligible prisoner was sentenced expires.

16           (2) TIMING OF RELEASE.—In carrying out the  
17 pilot program, the Director shall place an eligible  
18 prisoner on home detention under paragraph (1)—

19                   (A) with respect to a prisoner who is deter-  
20 mined to be an eligible prisoner on or before the  
21 date that is 90 days after the date of enactment  
22 of this Act, not later than 180 days after the  
23 date of enactment of this Act; and

24                   (B) with respect to a prisoner who is de-  
25 termined to be an eligible prisoner after the

1 date that is 90 days after the date of enactment  
2 of this Act and before the date that is 3 years  
3 and 91 days after such date of enactment, not  
4 later than 90 days after the date of such deter-  
5 mination.

6 (3) VIOLATION OF TERMS OF HOME DETEN-  
7 TION.—A violation of the terms of the home deten-  
8 tion, including the commission of another Federal,  
9 State, or local crime, shall result in the return of an  
10 eligible prisoner to the form of custody of that pris-  
11 oner prior to being placed on home detention.

12 (c) PROGRAM EVALUATION.—

13 (1) IN GENERAL.—The Director shall contract  
14 with an independent organization to monitor and  
15 evaluate the progress of each prisoner released  
16 under the pilot program during the 3-year period be-  
17 ginning on the date of such release.

18 (2) ANNUAL REPORT.—The organization de-  
19 scribed in paragraph (1) shall annually submit to  
20 the Director and to Congress a report on the pilot  
21 program, which shall include—

22 (A) an evaluation of the effectiveness of  
23 the pilot program in providing successful transi-  
24 tion to eligible prisoners from incarceration to

1 the community, including data relating to the  
2 recidivism rates for those prisoners; and

3 (B) the cost savings to the Federal Gov-  
4 ernment resulting from the early removal of eli-  
5 gible prisoners from incarceration.

6 **SEC. 204. EMERGENCY AMENDMENT AUTHORITY; EFFEC-**  
7 **TIVE DATE.**

8 (a) EMERGENCY AMENDMENT AUTHORITY.—

9 (1) IN GENERAL.—The United States Sen-  
10 tencing Commission, in its discretion, may—

11 (A) promulgate amendments pursuant to  
12 the directives in this Act in accordance with the  
13 procedure set forth in section 21(a) of the Sen-  
14 tencing Act of 1987 (28 U.S.C. 994 note), as  
15 though the authority under that section had not  
16 expired; and

17 (B) pursuant to the emergency authority  
18 provided in paragraph (1), make such con-  
19 forming amendments to the Sentencing Guide-  
20 lines as the Commission determines necessary  
21 to achieve consistency with other guideline pro-  
22 visions and applicable law.

23 (2) PROMULGATION.—The Commission shall  
24 promulgate any amendments under paragraph (1)

1 promptly, so that the amendments take effect on the  
2 same date as the amendments made by this Act.

3 (b) EFFECTIVE DATE.—

4 (1) IN GENERAL.—Except as provided in para-  
5 graph (2), this Act and the amendments made by  
6 this Act shall apply to any offense committed on or  
7 after 180 days after the date of enactment of this  
8 Act. There shall be no retroactive application of any  
9 portion of this Act.

10 (2) APPLICABILITY.—This subsection shall not  
11 apply to section 203 of this Act.

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