Again, this is about giving all consumers, whether they have a closet full of fur garments or wouldn't be caught dead in one, the complete information they need to make enlightened purchasing decisions.

This is a commonsense bill that deserves broad support, and I ask my colleagues to vote for its passage.

Mr. BLUMENAUER. Mr. Speaker, I am proud to support H.R. 2480, the Truth in Fur Labeling Act. This legislation is an important step for consumers and animals. It is also basic common sense. It removes a loophole that has kept consumers from knowing what they're buying and enforces a law that Congress passed ten years ago.

We all deserve to know what we're buying. However, the current fur labeling exemption is unclear and out of date, leaving consumers in the dark. Consumers often end up buying real fur that they are told is fake or domestic dog fur mislabeled as raccoon fur. If a product has less than $150 worth of fur on it, it doesn't even need to be labeled at all. That means that a $500 coat with $150 worth of fur on the collar and cuffs does not require a label. Based on approximate pelt prices after tanning and dressing, that coat could be made using the fur from 30 rabbits, three Arctic foxes, one otter or one timber wolf, without requiring any sort of label. That does not provide consumers with adequate protection and doesn't allow them to make informed decisions. The Truth in Fur Labeling Act will remedy the situation and give consumers the ability to make choices for themselves, rather than being kept in the dark or even deceived.

I am proud to support this legislation today, and am pleased to see the widespread support it has received from outside organizations, including such diverse groups as the Humane Society of the United States, Macy's and Saks Fifth Avenue. I hope that my colleagues will join me in protecting consumer rights and animal welfare.

Mr. SARBANES. Mr. Speaker, again, I urge the support of this bill from my colleagues, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Maryland (Mr. SARBANES) that the House suspend the rules and pass the bill, H.R. 2480, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

□ 1320

FAIR SENTENCING ACT OF 2010

Mr. SCOTT of Virginia. Mr. Speaker, I move to suspend the rules and pass the bill (S. 1789) to restore fairness to Federal cocaine sentencing.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 1789

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fair Sentencing Act of 2010''.

SEC. 2. COCAINE SENTENCING DISPARITY REDUCTION.

(a) CSA.—Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) is amended—

(1) in subparagraph (A)(iii), by striking ''50 grams'' and inserting ''280 grams''; and

(2) in subparagraph (B)(iii), by striking ''5 grams'' and inserting ''28 grams''.

(b) IMPORT AND EXPORT ACT.—Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) in paragraph (1)(C), by striking ''50 grams'' and inserting ''280 grams''; and

(2) in paragraph (2)(C), by striking ''5 grams'' and inserting ''28 grams''.

SEC. 3. ELIMINATION OF MANDATORY MINIMUM SENTENCE FOR SIMPLE POSSESSION.

Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended by striking the sentence beginning ''Notwithstanding the preceding sentence,''.

SEC. 4. INCREASED PENALTIES FOR MAJOR DRUG TRAFFICKERS.

(a) INCREASED PENALTIES FOR MANUFACTURE, DISTRIBUTION, DISPENSATION, OR POSSESSION WITH INTENT TO MANUFACTURE, DISTRIBUTE, OR DISPENSE.—Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)) is amended—

(1) in subparagraph (A), by striking ''$4,000,000'', ''$10,000,000'', ''$8,000,000'', and ''$20,000,000'' and inserting ''$10,000,000'', ''$50,000,000'', ''$20,000,000'', and ''$75,000,000'', respectively; and

(2) in subparagraph (B), by striking ''$2,000,000'', ''$5,000,000'', ''$4,000,000'', and ''$10,000,000'' and inserting ''$5,000,000'', ''$25,000,000'', ''$8,000,000'', and ''$50,000,000'', respectively.

(b) INCREASED PENALTIES FOR IMPORTATION AND EXPORTATION.—Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) in paragraph (1), by striking ''$4,000,000'', ''$10,000,000'', ''$8,000,000'', and ''$20,000,000'' and inserting ''$10,000,000'', ''$50,000,000'', ''$20,000,000'', and ''$75,000,000'', respectively; and

(2) in paragraph (2), by striking ''$2,000,000'', ''$5,000,000'', ''$4,000,000'', and ''$10,000,000'' and inserting ''$5,000,000'', ''$25,000,000'', ''$8,000,000'', and ''$50,000,000'', respectively.

SEC. 5. ENHANCEMENTS FOR ACTS OF VIOLENCE DURING THE COURSE OF A DRUG TRAFFICKING OFFENSE.

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines to ensure that the guidelines provide an additional penalty increase of at least 2 offense levels if the defendant used violence, made a credible threat to use violence, or directed the use of violence during a drug trafficking offense.

SEC. 6. INCREASED EMPHASIS ON DEFENDANT'S ROLE AND CERTAIN AGGRAVATING FACTORS.

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines to ensure an additional increase of at least 2 offense levels if—

(1) the defendant bribed, or attempted to bribe, a Federal, State, or local law enforcement official in connection with a drug trafficking offense;

(2) the defendant maintained an establishment for the manufacture or distribution of a controlled substance, as generally described in section 416 of the Controlled Substances Act (21 U.S.C. 856); or

(3)(A) the defendant is an organizer, leader, manager, or supervisor of drug trafficking activity subject to an aggravating role enhancement under the guidelines; and

(B) the offense involved 1 or more of the following super-aggravating factors:

(i) The defendant—

(I) used another person to purchase, sell, transport, or store controlled substances;

(II) used impulse, fear, friendship, affection, or some combination thereof to involve such person in the offense; and

(III) such person had a minimum knowledge of the illegal enterprise and was to receive little or no compensation from the illegal transaction.

(ii) The defendant—

(I) knowingly distributed a controlled substance to a person under the age of 18 years, a person over the age of 64 years, or a pregnant individual;

(II) knowingly involved a person under the age of 18 years, a person over the age of 64 years, or a pregnant individual in drug trafficking;

(III) knowingly distributed a controlled substance to an individual who was unusually vulnerable due to physical or mental condition, or who was particularly susceptible to criminal conduct; or

(IV) knowingly involved an individual who was unusually vulnerable due to physical or mental condition, or who was particularly susceptible to criminal conduct, in the offense.

(iii) The defendant was involved in the importation into the United States of a controlled substance.

(iv) The defendant engaged in witness intimidation, tampered with or destroyed evidence, or otherwise obstructed justice in connection with the investigation or prosecution of the offense.

(v) The defendant committed the drug trafficking offense as part of a pattern of criminal conduct engaged in as a livelihood.

SEC. 7. INCREASED EMPHASIS ON DEFENDANT'S ROLE AND CERTAIN MITIGATING FACTORS.

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and policy statements to ensure that—

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

(2) there is an additional reduction of 2 offense levels if the defendant—

(A) otherwise qualifies for a minimal role adjustment under the guidelines and had a minimum knowledge of the illegal enterprise;

(B) was to receive no monetary compensation from the illegal transaction; and

(C) was motivated by an intimate or familial relationship or by threats or fear when the defendant was otherwise unlikely to commit such an offense.

SEC. 8. EMERGENCY AUTHORITY FOR UNITED STATES SENTENCING COMMISSION.

The United States Sentencing Commission shall—

(1) promulgate the guidelines, policy statements, or amendments provided for in this Act as soon as practicable, and in any event not later than 90 days after the date of enactment of this Act, in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note), as though the authority under that Act had not expired; and

(2) pursuant to the emergency authority provided under paragraph (1), make such conforming amendments to the Federal sentencing guidelines as the Commission determines necessary to achieve consistency with

other guideline provisions and applicable law.

SEC. 9. REPORT ON EFFECTIVENESS OF DRUG COURTS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report analyzing the effectiveness of drug court programs receiving funds under the drug court grant program under part EE of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797–u et seq.).

(b) CONTENTS.—The report submitted under subsection (a) shall—

(1) assess the efforts of the Department of Justice to collect data on the performance of federally funded drug courts;

(2) address the effect of drug courts on recidivism and substance abuse rates;

(3) address any cost benefits resulting from the use of drug courts as alternatives to incarceration;

(4) assess the response of the Department of Justice to previous recommendations made by the Comptroller General regarding drug court programs; and

(5) make recommendations concerning the performance, impact, and cost-effectiveness of federally funded drug court programs.

SEC. 10. UNITED STATES SENTENCING COMMISSION REPORT ON IMPACT OF CHANGES TO FEDERAL COCAINE SENTENCING LAW.

Not later than 5 years after the date of enactment of this Act, the United States Sentencing Commission, pursuant to the authority under sections 994 and 995 of title 28, United States Code, and the responsibility of the United States Sentencing Commission to advise Congress on sentencing policy under section 995(a)(20) of title 28, United States Code, shall study and submit to Congress a report regarding the impact of the changes in Federal sentencing law under this Act and the amendments made by this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. SCOTT) and the gentleman from Texas (Mr. SMITH) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia.

GENERAL LEAVE

Mr. SCOTT of Virginia. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. SCOTT of Virginia. I yield myself such time as I may consume.

Mr. Speaker, S. 1789, the Fair Sentencing Act of 2010, is a bipartisan compromise that was negotiated and drafted by Democratic and Republican members of the Senate Judiciary Committee. It then passed the Senate Judiciary Committee and the Senate by unanimous consent.

The legislation will reduce the 100-to-1 sentencing disparity between crack and powder cocaine in Federal law from 100-to-1 down to 18-to-1. The crack penalties, under present law, for example, it only takes five grams of crack to trigger a 5-year mandatory minimum sentence, but for powder cocaine it takes 500 grams to trigger the same 5-year mandatory sentence, a 100-to-1 ratio.

This disparity is particularly egregious when you consider that the Sentencing Commission has concluded that there is no pharmacological difference between the two forms of cocaine, and that 80 percent of the crack defendants are black, whereas only 30 percent of the powder cocaine defendants are black.

The crack penalties also create bizarre sentences when you consider sentences such as the 24½-year sentence given to Kimba Smith for behavior that was just inferentially involved with her boyfriend's cocaine dealing.

The legislation moves the threshold amount for the 5-year mandatory minimum from five grams to one ounce, reducing the disparity from 100-to-1 to 18-to-1. The legislation does not fully eliminate the 100-to-1 disparity in sentencing for crack and powder, but it does make good progress in addressing what is widely recognized as unfair treatment of like offenders based simply on the form of cocaine they possessed.

The bill also addresses another concern. Arguments are made that crack defendants are more likely to use violence or minors in the distribution, and this bill specifically requires the Sentencing Commission to significantly increase penalties for drug violations involving violence, threats of violence, or use of minors, and another long list of aggravating activities that would be involved. This way the defendant is sentenced for what he or she actually did, not the form of cocaine involved.

Many organizations are supporting S. 1789, including the Federal Law Enforcement Officers Association, the National District Attorneys Association, the National Association of Police Officers, the Council of Prison Locals, and several conservative religious organizations such as Prison Fellowship and the National Association of Evangelicals. And all of the civil rights organizations that one can imagine are also supporting the legislation.

I would like to thank the sponsors of the Senate bill, Senators DURBIN of Illinois and SESSIONS of Alabama, and ORRIN HATCH of Utah, who came together to pass this important bipartisan legislation.

There are many Members of the House who have worked tirelessly over the years to reform this disparity, including chairman of the Judiciary Committee, Mr. CONYERS; SHEILA JACKSON LEE; MAXINE WATERS; CHARLIE RANGEL; and MEL WATT.

On behalf of the organizations and Members of Congress who support S. 1789, I urge my colleagues to support the legislation.

I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, those who fail to learn the lessons of history often pay a price. Unfortunately, the real cost usually falls on others. In the 1980s, America faced an epidemic created by a new, more potent form of cocaine known as crack. Its abuse spread through major cities and across the country at a stunning speed. Along with crack came guns and violence, which riddled many urban communities.

These communities cried out for help, and in 1986 Congress responded. We enacted tough penalties to protect these neighborhoods and bring an end to the scourge of crack cocaine. The penalties helped make America's communities safer.

Now Congress is considering legislation to wind down the fight against drug addiction and drug-related violence. Reducing the penalties for crack cocaine could expose our neighborhoods to the same violence and addiction that caused Congress to act in the first place.

Twenty-five years ago, crack was cheap, easily available, and highly profitable. According to the Drug Enforcement Agency, never before had any form of cocaine been available at such low prices and at such high purity. As a result, the number of Americans addicted to cocaine increased dramatically. Crack cocaine devastated many communities, especially inner-city communities. Black Americans who lived in these communities bore the brunt of the violence associated with the drug trade.

Today, crime rates, particularly for violent crimes, are at their lowest levels in more than 30 years, thanks in large part to the enactment of tough penalties for drug trafficking and other offenses. Crack and powder cocaine use has dropped by almost two-thirds in the past 20 years, from 5.8 million users in 1985 to 2.1 million users in 2007. According to the Bureau of Justice Statistics, crime victimization rates for black Americans have fallen by more than two-thirds since enactment of these tough Federal trafficking penalties. What's wrong with that? Why do we want to risk another surge of addiction and violence by reducing penalties?

Many argue that Federal prisons are filled with addicts convicted of simple possession of cocaine, but that's not true. The vast majority of Federal drug offenders are convicted for drug trafficking. In fiscal year 2009, the U.S. Sentencing Commission reports that there were 25,000 Federal drug trafficking convictions compared to fewer than 300 convictions for simple possession. So why do we want to make it more difficult to take drug traffickers off the streets and easier for them to peddle their lethal product?

Crack cocaine is associated with a greater degree of violence than most other drugs. Crack offenders are also more likely to have prior convictions and lengthier criminal histories than powder cocaine offenders. It is these aggravating factors, which are more common to crack cocaine trafficking, that contribute to higher Federal

crack sentences. These aggravating factors also render many Federal crack offenders ineligible for the so-called ''safety valve provision.'' The safety valve allows low-level offenders to be sentenced below the statutory mandatory penalties if they meet certain criteria, including no significant criminal history.

So why should we reduce the ratio for defendants who are more violent, more likely to have criminal records, and less likely to benefit from the safety valve provision that already provides a mechanism for reduced penalties? Why are we coddling some of the most dangerous drug traffickers in America?

Proponents of reducing or eliminating the crack/powder ratio argue that crack penalties impact a larger number of minorities than powder cocaine penalties. But the percentage of minority defendants for Federal crack and powder cocaine offenses is quite similar. Eighty-two percent of crack offenders and 90 percent of powder cocaine offenders are minorities, though black Americans comprise the majority of Federal crack cocaine offenders.

Crack and powder cocaine offenders are even sentenced with mandatory penalties at similar rates. In 2009, 80 percent of crack cocaine offenders and 77 percent of powder cocaine offenders were convicted under a mandatory penalty statute. The bill before us today, S. 1789, lowers the ratio for Federal crack cocaine offenses from 100-to-1 to 18-to-1. The bill also eliminates the mandatory penalties for crack cocaine possession, making it only a misdemeanor under Federal law. Why enact legislation that could endanger our children and bring violence back to our inner-city communities?

S. 1789 includes a requirement that the U.S. Sentencing Commission review and amend the applicable guidelines for crack offenses involving violence. However, since Federal judges are not required to adhere to the guidelines, there is no guarantee that any increased penalty will be imposed under this provision.

Last year, the House Judiciary Committee reported legislation, over Republican opposition, that would have eliminated entirely the ratio between crack and powder cocaine. Before that, the Obama administration relaxed enforcement of marijuana laws.

Mr. Speaker, the Democratic Party teeters on the edge of becoming the face of deficits, drugs, and job destruction. I cannot support legislation that might enable the violent and devastating crack cocaine epidemic of the past to become a clear and present danger.

□ 1330

Mr. Speaker, for these reasons, I urge my colleagues to oppose this legislation.

I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 3 minutes to the majority whip, the gentleman from South Carolina (Mr. CLYBURN).

Mr. CLYBURN. Mr. Speaker, I want to first thank my good friend, subcommittee Chairman BOBBY SCOTT, for yielding me this time and for his leadership on this very important issue. He and committee Chairman CONYERS have worked for years to eliminate the unjust and discriminatory disparities between crack cocaine and powder cocaine.

Although I'm disappointed that this measure does not entirely eliminate the disparity, I want to commend Senators DURBIN, SESSIONS, and COBURN for crafting a very significant compromise. The Fair Sentencing Act of 2009 will significantly reduce the disparity in sentencing for crack and powder cocaine and help to correct an enormous disparity in our criminal justice system.

When the current law was passed, Congress felt that crack cocaine was a plague that was destroying minority communities. Twenty years of experience has taught us that many of our initial beliefs were wrong. We now know that there's little or no pharmacological distinction between crack cocaine and powder cocaine, yet the punishment for these offenses remains radically different.

Down where I come from, Mr. Speaker, we say that when one learns better, one should do better.

Equally troubling is the enormous growth in the prison population, especially among minority youth. The current drug sentencing policy is the single greatest cause of the record levels of incarceration in our country. One in every 31 Americans is in prison or on parole or on probation, including one in 11 African Americans. This is unjust and runs contrary to our fundamental principles of equal protection under the law.

Since 1995, the United States Sentencing Commission has issued report after report calling on Congress to address this unfair disparity. According to the Sentencing Commission, restoring sentencing parity will do more than any other policy change to close the gap in incarceration rates between African Americans and white Americans.

The American drug epidemic is a serious problem, and we must address that problem. But our drug laws must be smart, fair, and rational. The legislation to be considered today takes a significant step towards striking that balance.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER), a former chairman of the Judiciary Committee.

Mr. SENSENBRENNER. Mr. Speaker, I rise in support of this legislation. It is a fair compromise. It deals with conflicting issues, and it looked at the data on who was indicted and who has been sentenced both by race as well as by the amount of cocaine that they possessed.

Unlike some allegations, this bill does not let those who possess crack cocaine off easily. The sentencing disparity is 18-to-1. That means that someone who possesses crack cocaine only has to have one-eighteenth of the amount of someone who possesses powder cocaine. So I don't think that people who either deal in crack cocaine or who possess crack cocaine are getting off the hook by reducing the ratio from 100-to-1 to 18-to-1.

The Sentencing Commission has been set up by this Congress to look at sentencing patterns and look at sentencing statistics. For the last 15 years, they have called for a change in the disparity and the minimum sentences between those who are indicted for violating the crack cocaine laws versus those who are indicted for violating the powder cocaine laws.

This is a very fair compromise. I salute the three members of the other body who worked the compromise out. It is a compromise that should be endorsed by this body and sent to the President. I urge an ''aye'' vote.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2 minutes to the gentlelady from Texas who has sponsored one of the many bills on this issue and has worked hard to eliminate the disparity altogether, Ms. JACKSON LEE.

(Ms. JACKSON LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON LEE of Texas. I want to thank the gentleman from Virginia for being a champion of this issue of eliminating the disparities that have so long plagued so many communities. I thank the chairman, JOHN CONYERS, for being persistent over the years on the criminal justice issues—even coming to Houston, Texas, and listening to a teeming room of individuals who came to tell him how they had been discriminated against by this overwhelming inequitable law dealing with crack cocaine. Thank you.

Today we're doing something that is not going to be soft on crime. But let me see if you understand this.

It takes 500 grams of powder cocaine to trigger the 5-year mandatory minimum. It just takes 5 grams of crack cocaine. Similarly it takes 5 kilograms of powder cocaine to trigger the 10-year mandatory minimum but 50 grams of crack cocaine.

And so it is important that this 1-to-18 be put in place in response to the 1980s when we thought this devastating act of using drugs was the underpinnings of crime. But what we have seen and what the U.S. Sentencing Commission has seen is that we're creating crime by throwing these individuals in jail instead of rehabilitation and by keeping this oppressive sentencing structure.

So for the first time, we're eliminating the 5-year mandatory minimum prison term for first-time possession of crack cocaine and it encourages the U.S. Sentencing Commission to amend the sentencing guidelines.

In addition, however, there's more to go. Passing the Promise Bill to detour young people away from crime. H.R. 265, the bill I introduced, which was the underpinnings of the S. 1789, had a number of other provisions that would be dealing with rehabilitation and drug courts.

So there's more work to be done, Mr. Speaker. But I believe this is a first step and all good-thinking Americans who understand justice will appreciate the fact that we are eliminating these disparities. And in particular, I will say to you that this fell heavily on the poor African American and Hispanic communities.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. SCOTT of Virginia. Mr. Speaker, I yield the gentlelady an additional minute.

Ms. JACKSON LEE of Texas. I thank the distinguished gentleman.

The statistics are very clear that the burden fell on a population that suffered more by not getting into rehabilitation than others. It is very clear that those numbers are strong.

So I would simply say that as we begin our work on establishing fairness, this is a first step. And I would say to the distinguished Members that we can do better on rehabilitation, drug court, intervention—which allows people to get into rehabilitation and have an obligation to finish.

And the main thing that I want to leave us with, doing this will help us detour any number of individuals to be able to support their family and maybe be real role models for children who we likewise want to detour away from crime by having an innovative juvenile justice system by passing this bill and going on to have criminal justice reform as we pass the Promise Act as well.

I rise in support of S. 1789, a bill that seeks to amend the Controlled Substances Act and the Controlled Substances Import and Export Act in order to lessen the disparity between penalties for crack cocaine and powder cocaine that permeates the Sentencing Guidelines. I also want to thank Senator RICHARD DURBIN (IL), for introducing this important legislation and being a leader on this issue.

This act requires Congress to change existing legislation in order to increase the amount of a controlled substance or mixture containing a cocaine base (i.e., crack cocaine) required for the imposition of mandatory minimum prison terms for trafficking. This bill also calls for an increase of monetary penalties for drug trafficking and for the importation and exportation of controlled substances.

Last year I introduced a bill called the Drug Sentencing Reform and Cocaine Kingpin Trafficking Act of 2009, H.R. 265, in which I proposed many of the reforms proposed in S. 1789. In H.R. 265, I proposed 1 to 1 for crack and cocaine and added a long list of drug treatment measures. It is widely known that it takes 100 times more powder cocaine than crack cocaine to trigger the 5- and 10-year mandatory minimum sentences. While it takes 500 grams of powder cocaine to trigger the 5-year mandatory minimum sentence, it takes just 5 grams of crack cocaine to trigger that sentence. Similarly, while it takes 5 kilograms of powder cocaine to trigger the 10-year mandatory minimum sentence, 50 grams of crack cocaine will trigger the same sentence.

This disparity made no sense when it was initially enacted, and makes absolutely no sense today, because cocaine base commonly known as 'crack cocaine,' is made by dissolving cocaine hydrochloride, which is commonly known as 'powder cocaine,' in a solution of sodium bicarbonate (or a similar agent) and water. Therefore, crack and powder cocaine are simply different forms of the same substance and all crack cocaine originates as powder cocaine.

Both forms of cocaine cause identical physical effects, although crack is smoked, while powder cocaine is typically snorted or injected. Epidemiological data show that smoking a drug delivers it to the brain more rapidly, which increases the likelihood of addiction. Therefore, differences in the typical method of administration of the two forms of the drug, and not differences in the inherent properties of the two forms of the drug, make crack cocaine potentially more addictive to typical users than powder cocaine. Both forms of the drug are addictive, however, and the treatment protocol for the drug is the same regardless of the form of the drug the patient has used.

Although Congress in the mid-1980s was understandably concerned that the low-cost and potency of crack cocaine would fuel an epidemic of use by minors, the epidemic of crack cocaine use by young people never materialized to the extent feared. In fact, in 2005, the rate of powder cocaine use among young adults was almost 7 times as high as the rate of crack cocaine use. Furthermore, sentencing data suggest that young people do not play a major role in crack cocaine trafficking at the Federal level.

The current 100 to 1 penalty structure undermines various congressional objectives set forth in the Anti-Drug Abuse Act of 1986. Data collected by the U.S. Sentencing Commission show that Federal resources have been targeted at offenders who are subject to the mandatory minimum sentences, which sweep in low-level crack cocaine users and dealers.

It is time for us to realize that the only real difference between these two substances is that a disproportionate number of the races flock to one or the other. It follows that more whites use cocaine, and more African Americans use crack cocaine. The unwarranted sentencing disparity not only overstates the relative harmfulness of the two forms of the drug and diverts federal resources from high-level drug traffickers, but it also disproportionately affects the African-American community. According to the U.S. Sentencing Commission's May 2007 Report, 82 percent of Federal crack cocaine offenders sentenced in 2006 were African-American, while 8 percent were Hispanic and 8 percent were white.

Like H.R. 265, my bill, S. 1789 will eliminate the five-year mandatory minimum prison term for first-time possession of crack cocaine. It also encourages the U.S. Sentencing Commission to amend its sentencing guidelines to (1) increase sentences for defendants convicted of using violence during a drug trafficking offense; (2) incorporate aggravating and mitigating factors in its guidelines for drug trafficking offenses; (3) promulgate guidelines, policy statements, or amendments required by this Act as soon as practicable, but not later than 90 days after the enactment of this Act; and (4) study and report to Congress on the impact of changes in sentencing law under this Act.

For the foregoing reasons, I stand with Mr. DURBIN in support of amending the Controlled Substances Act and the Controlled Substances Import and Export Act in order to lessen the disparity between penalties for crack cocaine and powder cocaine that permeate the Sentencing Guidelines.

I urge my colleagues to support this bill.

H.R. 265

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Drug Sentencing Reform and Cocaine Kingpin Trafficking Act of 2009''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Cocaine base (commonly known as ''crack cocaine'') is made by dissolving cocaine hydrochloride (commonly known as ''powder cocaine'') in a solution of sodium bicarbonate (or a similar agent) and water. Therefore, crack and powder cocaine are simply different forms of the same substance and all crack cocaine originates as powder cocaine.

(2) The physiological and psychotropic effects of cocaine are similar regardless of whether it is in the form of cocaine base (crack) or cocaine hydrochloride (powder).

(3) One of the principal objectives of the Anti-Drug Abuse Act of 1986, which established different mandatory minimum penalties for different drugs, was to target Federal law enforcement and prosecutorial resources on serious and major drug traffickers.

(4) 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).

(5) Although drug purity and individual tolerance vary, making it difficult to state with specificity the individual dose of each form of cocaine, 5 grams of powder cocaine generally equals 25 to 50 individual doses and 500 grams of powder cocaine generally equals 2,500 to 5,000 individual doses, while 5 grams of crack cocaine generally equals 10 to 50 individual doses (or enough for a heavy user to consume in one weekend) and 500 grams of crack cocaine generally equals 100 to 500 individual doses.

(6) In part because Congress believed that crack cocaine had unique properties that made it instantly addictive, the Anti-Drug Abuse Act of 1986 established an enormous disparity (a 100 to 1 powder-to-crack ratio) in the quantities of powder and crack cocaine that trigger 5- and 10-year mandatory minimum sentences. This disparity permeates the Sentencing Guidelines.

(7) Congress also based its decision to establish the 100 to 1 quantity ratio on the beliefs that—

(A) crack cocaine distribution and use was associated with violent crime to a much greater extent than was powder cocaine;

(B) prenatal exposure to crack cocaine was particularly devastating for children of crack users;

(C) crack cocaine use was particularly prevalent among young people; and

(D) crack cocaine's potency, low cost, and ease of distribution and use were fueling its widespread use.

(8) As a result, it takes 100 times more powder cocaine than crack cocaine to trigger the 5- and 10-year mandatory minimum sentences. While it takes 500 grams of powder cocaine to trigger the 5-year mandatory minimum sentence, it takes just 5 grams of crack cocaine to trigger that sentence. Similarly, while it takes 5 kilograms of powder cocaine to trigger the 10-year mandatory minimum sentence, 50 grams of crack cocaine will trigger the same sentence.

(9) Most of the assumptions on which the current penalty structure was based have turned out to be unfounded.

(10) Studies comparing usage of powder and crack cocaine have shown that there is little difference between the two forms of the drug and fundamentally undermine the current quantity-based sentencing disparity. More specifically, the studies have shown the following:

(A) Both forms of cocaine cause identical effects, although crack is smoked, while powder cocaine is typically snorted. Epidemiological data show that smoking a drug delivers it to the brain more rapidly, which increases likelihood of addiction. Therefore, differences in the typical method of administration of the two forms of the drug, and not differences in the inherent properties of the two forms of the drug, make crack cocaine potentially more addictive to typical users than powder cocaine. Both forms of the drug are addictive, however, and the treatment protocol for the drug is the same regardless of the form of the drug the patient has used.

(B) Violence committed by crack users is relatively rare, and overall violence has decreased for both powder and crack cocaine offenses. Almost all crack-related violence is systemic violence that occurs within the drug distribution process. Sentencing enhancements are better suited to punish associated violence, which are separate, pre-existing crimes in and of themselves.

(C) The negative effects of prenatal exposure to crack cocaine were vastly overstated. They are identical to the effects of prenatal exposure to powder cocaine and do not serve as a justification for the sentencing disparity between crack and powder.

(D) Although Congress in the mid-1980s was understandably concerned that the low-cost and potency of crack cocaine would fuel an epidemic of use by minors, the epidemic of crack cocaine use by young people never materialized to the extent feared. In fact, in 2005, the rate of powder cocaine use among young adults was almost 7 times as high as the rate of crack cocaine use. Furthermore, sentencing data suggest that young people do not play a major role in crack cocaine trafficking at the Federal level.

(E) The current 100 to 1 penalty structure undermines various congressional objectives set forth in the Anti-Drug Abuse Act of 1986. Data collected by the United States Sentencing Commission show that Federal resources have been targeted at offenders who are subject to the mandatory minimum sentences, which sweep in low-level crack cocaine users and dealers.

(11) In 1988, Congress set a mandatory minimum sentence for mere possession of crack cocaine, the only controlled substance for which there is a mandatory minimum sentence for simple possession for a first-time offender.

(12) Major drug traffickers and kingpins traffic in powder, not crack.

(13) Contrary to Congress's objective of focusing Federal resources on drug kingpins, the majority of Federal powder and crack cocaine offenders are those who perform low level functions in the supply chain.

(14) As a result of the low-level drug quantities that trigger lengthy mandatory minimum penalties for crack cocaine, the concentration of lower level Federal offenders is particularly pronounced among crack cocaine offenders, more than half of whom were street level dealers in 2005.

(15) The Departments of Justice, Treasury, and Homeland Security are the agencies with the greatest capacity to investigate, prosecute, and dismantle the highest level of drug trafficking organizations, but investigations and prosecutions of low-level offenders divert Federal personnel and resources from the prosecution of the highest-level traffickers, for which such agencies are best suited.

(16) The unwarranted sentencing disparity not only overstates the relative harmfulness of the two forms of the drug and diverts Federal resources from high-level drug traffickers, but it also disproportionately affects the African-American community. According to the United States Sentencing Commission's May 2007 Report, 82 percent of Federal crack cocaine offenders sentenced in 2006 were African-American, while 8 percent were Hispanic and 8 percent were White.

(17) Only 13 States have sentencing laws that distinguish between powder and crack cocaine.

SEC. 3. COCAINE SENTENCING DISPARITY ELIMINATION.

(a) CSA.—Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) is amended—

(1) in subparagraph (A)(iii), by striking ''50 grams'' and inserting ''5 kilograms''; and

(2) in subparagraph (B)(iii), by striking ''5 grams'' and inserting ''500 grams.''

(b) IMPORT AND EXPORT ACT.—Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) in paragraph (1)(C), by striking ''50 grams'' and inserting ''5 kilograms''; and

(2) in paragraph (2)(C), by striking ''5 grams'' and inserting ''500 grams''.

SEC. 4. ELIMINATION OF MANDATORY MINIMUM FOR SIMPLE POSSESSION.

Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended by striking the sentence beginning ''Notwithstanding the preceding sentence,''.

SEC. 5. INCREASED EMPHASIS ON CERTAIN AGGRAVATING AND MITIGATING FACTORS.

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and, if appropriate, amend the sentencing guidelines to ensure that the penalties for an offense involving trafficking of a controlled substance—

(1) provide tiered enhancements for the involvement of a dangerous weapon or violence, including, if appropriate—

(A) an enhancement for the use or brandishment of a dangerous weapon;

(B) an enhancement for the use, or threatened use, of violence; and

(C) any other enhancement the Commission considers necessary;

(2) adequately take into account the culpability of the defendant and the role of the defendant in the offense, including consideration of whether enhancements should be added, either to the existing enhancements for aggravating role or otherwise, that take into account aggravating factors associated with the offense, including—

(A) whether the defendant committed the offense as part of a pattern of criminal conduct engaged in as a livelihood;

(B) whether the defendant is an organizer or leader of drug trafficking activities involving five or more persons;

(C) whether the defendant maintained an establishment for the manufacture or distribution of the controlled substance;

(D) whether the defendant distributed a controlled substance to an individual under the age of 21 years of age or to a pregnant woman;

(E) whether the defendant involved an individual under the age of 18 years or a pregnant woman in the offense;

(F) whether the defendant manufactured or distributed the controlled substance in a location described in section 409(a) or section 419(a) of the Controlled Substances Act (21 U.S.C. 849(a) or 860(a));

(G) whether the defendant bribed, or attempted to bribe, a Federal, State, or local law enforcement officer in connection with the offense;

(H) whether the defendant was involved in importation into the United States of a controlled substance;

(I) whether bodily injury or death occurred in connection with the offense;

(J) whether the defendant committed the offense after previously being convicted of a felony controlled substances offense; and

(K) any other factor the Commission considers necessary; and

(3) adequately take into account mitigating factors associated with the offense, including—

(A) whether the defendant had minimum knowledge of the illegal enterprise;

(B) whether the defendant received little or no compensation in connection with the offense;

(C) whether the defendant acted on impulse, fear, friendship, or affection when the defendant was otherwise unlikely to commit such an offense; and

(D) whether any maximum base offense level should be established for a defendant who qualifies for a mitigating role adjustment.

SEC. 6. OFFENDER DRUG TREATMENT INCENTIVE GRANTS.

(a) GRANT PROGRAM AUTHORIZED.—The Attorney General shall carry out a grant program under which the Attorney General may make grants to States, units of local government, territories, and Indian tribes in an amount described in subsection (c) to improve the provision of drug treatment to offenders in prisons, jails, and juvenile facilities.

(b) REQUIREMENTS FOR APPLICATION.—

(1) IN GENERAL.—To be eligible to receive a grant under subsection (a) for a fiscal year, an entity described in such subsection shall, in addition to any other requirements specified by the Attorney General, submit to the Attorney General an application that demonstrates that, with respect to offenders in prisons, jails, and juvenile facilities who require drug treatment and who are in the custody of the jurisdiction involved, during the previous fiscal year that entity provided drug treatment meeting the standards established by the Single State Authority for Substance Abuse (as that term is defined in section 7(e)) for the relevant State to a number of such offenders that is two times the number of such offenders to whom that entity provided drug treatment during the fiscal year that is 2 years before the fiscal year for which that entity seeks a grant.

(2) OTHER REQUIREMENTS.—An application under this section shall be submitted in such form and manner and at such time as specified by the Attorney General.

(c) ALLOCATION OF GRANT AMOUNTS BASED ON DRUG TREATMENT PERCENT DEMONSTRATED.—The Attorney General shall allocate amounts under this section for a fiscal year based on the percent of offenders described in subsection (b)(1) to whom an entity provided drug treatment in the previous fiscal year, as demonstrated by that entity in its application under that subsection.

(d) USES OF GRANTS.—A grant awarded to an entity under subsection (a) shall be used—

(1) for continuing and improving drug treatment programs provided at prisons, jails, and juvenile facilities of that entity; and

(2) to strengthen rehabilitation efforts for offenders by providing addiction recovery support services, such as job training and placement, education, peer support, mentoring, and other similar services.

(e) REPORTS.—An entity that receives a grant under subsection (a) during a fiscal year shall, not later than the last day of the following fiscal year, submit to the Attorney General a report that describes and assesses the uses of such grant.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 to carry out this section for each of fiscal years 2009 and 2010.

SEC. 7. GRANTS FOR DEMONSTRATION PROGRAMS TO REDUCE DRUG USE SUBSTANCE ABUSERS.

(a) AWARDS REQUIRED.—The Attorney General may make competitive grants to eligible partnerships, in accordance with this section, for the purpose of establishing demonstration programs to reduce the use of alcohol and other drugs by supervised substance abusers during the period in which each such substance abuser is in prison, jail, or a juvenile facility, and until the completion of parole or court supervision of such abuser.

(b) USE OF GRANT FUNDS.—A grant made under subsection (a) to an eligible partnership for a demonstration program, shall be used—

(1) to support the efforts of the agencies, organizations, and researchers included in the eligible partnership, with respect to the program for which a grant is awarded under this section;

(2) to develop and implement a program for supervised substance abusers during the period described in subsection (a), which shall include—

(A) alcohol and drug abuse assessments that—

(i) are provided by a State-approved program; and

(ii) provide adequate incentives for completion of a comprehensive alcohol or drug abuse treatment program, including through the use of graduated sanctions; and

(B) coordinated and continuous delivery of drug treatment and case management services during such period; and

(3) to provide addiction recovery support services (such as job training and placement, peer support, mentoring, education, and other related services) to strengthen rehabilitation efforts for substance abusers.

(c) APPLICATION.—To be eligible for a grant under subsection (a) for a demonstration program, an eligible partnership shall submit to the Attorney General an application that—

(1) identifies the role, and certifies the involvement, of each agency, organization, or researcher involved in such partnership, with respect to the program;

(2) includes a plan for using judicial or other criminal or juvenile justice authority to supervise the substance abusers who would participate in a demonstration program under this section, including for—

(A) administering drug tests for such abusers on a regular basis; and

(B) swiftly and certainly imposing an established set of graduated sanctions for noncompliance with conditions for reentry into the community relating to drug abstinence (whether imposed as a pre-trial, probation, or parole condition, or otherwise);

(3) includes a plan to provide supervised substance abusers with coordinated and continuous services that are based on evidence-based strategies and that assist such abusers by providing such abusers with—

(A) drug treatment while in prison, jail, or a juvenile facility;

(B) continued treatment during the period in which each such substance abuser is in prison, jail, or a juvenile facility, and until the completion of parole or court supervision of such abuser;

(C) addiction recovery support services;

(D) employment training and placement;

(E) family-based therapies;

(F) structured post-release housing and transitional housing, including housing for recovering substance abusers; and

(G) other services coordinated by appropriate case management services;

(4) includes a plan for coordinating the data infrastructures among the entities included in the eligible partnership and between such entities and the providers of services under the demonstration program involved (including providers of technical assistance) to assist in monitoring and measuring the effectiveness of demonstration programs under this section; and

(5) includes a plan to monitor and measure the number of substance abusers—

(A) located in each community involved; and

(B) who improve the status of their employment, housing, health, and family life.

(d) REPORTS TO CONGRESS.—

(1) INTERIM REPORT.—Not later than September 30, 2009, the Attorney General shall submit to Congress a report that identifies the best practices relating to the comprehensive and coordinated treatment of substance abusers, including the best practices identified through the activities funded under this section.

(2) FINAL REPORT.—Not later than September 30, 2010, the Attorney General shall submit to Congress a report on the demonstration programs funded under this section, including on the matters specified in paragraph (1).

(e) DEFINITIONS.—In this section:

(1) ELIGIBLE PARTNERSHIP.—The term ''eligible partnership'' means a partnership that includes—

(A) the applicable Single State Authority for Substance Abuse;

(B) the State, local, territorial, or tribal criminal or juvenile justice authority involved;

(C) a researcher who has experience in evidence-based studies that measure the effectiveness of treating long-term substance abusers during the period in which such abusers are under the supervision of the criminal or juvenile justice system involved;

(D) community-based organizations that provide drug treatment, related recovery services, job training and placement, educational services, housing assistance, mentoring, or medical services; and

(E) Federal agencies (such as the Drug Enforcement Agency, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and the office of a United States attorney).

(2) SUBSTANCE ABUSER.—The term ''substance abuser'' means an individual who—

(A) is in a prison, jail, or juvenile facility;

(B) has abused illegal drugs or alcohol for a number of years; and

(C) is scheduled to be released from prison, jail, or a juvenile facility during the 24-month period beginning on the date the relevant application is submitted under subsection (c).

(3) SINGLE STATE AUTHORITY FOR SUBSTANCE ABUSE.—The term ''Single State Authority for Substance Abuse'' means an entity designated by the Governor or chief executive officer of a State as the single State administrative authority responsible for the planning, development, implementation, monitoring, regulation, and evaluation of substance abuse services in that State.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for each of fiscal years 2009 and 2010.

SEC. 8. EMERGENCY AUTHORITY FOR UNITED STATES SENTENCING COMMISSION.

(a) IN GENERAL.—The United States Sentencing Commission, in its discretion, may—

(1) promulgate amendments pursuant to the directives in this Act in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (Public Law 100–182), as though the authority under that Act had not expired; and

(2) pursuant to the emergency authority provided in paragraph (1), make such conforming amendments to the Sentencing Guidelines as the Commission determines necessary to achieve consistency with other guideline provisions and applicable law.

(b) PROMULGATION.—The Commission shall promulgate any amendments under subsection (a) promptly so that the amendments take effect on the same date as the amendments made by this Act.

SEC. 9. INCREASED PENALTIES FOR MAJOR DRUG TRAFFICKERS.

(a) INCREASED PENALTIES FOR MANUFACTURE, DISTRIBUTION, DISPENSATION, OR POSSESSION WITH INTENT TO MANUFACTURE, DISTRIBUTE, OR DISPENSE.—Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)) is amended—

(1) in subparagraph (A), by striking ''$4,000,000'', ''$10,000,000'', ''$8,000,000'', and ''$20,000,000'' and inserting ''$10,000,000'', ''$50,000,000'', ''$20,000,000'', and ''$75,000,000'', respectively; and

(2) in subparagraph (B), by striking ''$2,000,000'', ''$5,000,000'', ''$4,000,000'', and ''$10,000,000'' and inserting ''$5,000,000'', ''$25,000,000'', ''$8,000,000'', and ''$50,000,000'', respectively.

(b) INCREASED PENALTIES FOR IMPORTATION AND EXPORTATION.—Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) in paragraph (1), by striking ''$4,000,000'', ''$10,000,000'', ''$8,000,000'', and ''$20,000,000'' and inserting ''$10,000,000'', ''$50,000,000'', ''$20,000,000'', and ''$75,000,000'', respectively, and

(2) in paragraph (2), by striking ''$2,000,000'', ''$5,000,000'', ''$4,000,000'', and ''$10,000,000'' and inserting ''$5,000,000'', ''$25,000,000'', ''$8,000,000'', and ''$50,000,000'', respectively.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS AND REQUIRED REPORT.

(a) AUTHORIZATION OF APPROPRIATIONS FOR DEPARTMENT OF JUSTICE.—There is authorized to be appropriated to the Department of Justice not more than $36,000,000 for each of the fiscal years 2009 and 2010 for the prosecution of high-level drug offenses, of which—

(1) $15,000,000 is for salaries and expenses of the Drug Enforcement Administration;

(2) $15,000,000 is for salaries and expenses for the Offices of United States Attorneys;

(3) $4,000,000 each year is for salaries and expenses for the Criminal Division; and

(4) $2,000,000 is for salaries and expenses for the Office of the Attorney General for the management of such prosecutions.

(b) AUTHORIZATION OF APPROPRIATIONS FOR DEPARTMENT OF TREASURY.—There is authorized to be appropriated to the Department of the Treasury for salaries and expenses of the Financial Crime Enforcement Network (FINCEN) not more than $10,000,000 for each of fiscal years 2009 and 2010 in support of the prosecution of high-level drug offenses.

(c) AUTHORIZATION OF APPROPRIATIONS FOR DEPARTMENT OF HOMELAND SECURITY.—There is authorized to be appropriated for the Department of Homeland Security not more

than $10,000,000 for each of fiscal years 2009 and 2010 for salaries and expenses in support of the prosecution of high-level drug offenses.

(d) ADDITIONAL FUNDS.—Amounts authorized to be appropriated under this section shall be in addition to amounts otherwise available for, or in support of, the prosecution of high-level drug offenses.

(e) REPORT OF COMPTROLLER GENERAL.—Not later than 180 days after the end of each of fiscal years 2009 and 2010, the Comptroller General shall submit to the Committees on the Judiciary and the Committees on Appropriations of the Senate and House of Representatives a report containing information on the actual uses made of the funds appropriated pursuant to the authorization of this section.

SEC. 11. EFFECTIVE DATE.

The amendments made by this Act shall apply to any offense committed on or after 180 days after the date of enactment of this Act. There shall be no retroactive application of any portion of this Act.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. LUNGREN), a senior and active member of the Judiciary Committee.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I rise in support of S. 1789, but as someone who helped to write the Drug Control Act of 1986 that we seek to amend, I'd like to make a few observations to set the record straight.

It is indeed true that the death of basketball star Len Bias served as an exclamation point concerning the threat posed to our Nation by the scourge of illegal drug use. The fact that someone who seemed bigger than life could fall prey to the growing cocaine epidemic brought home the reality of the danger to every home with a television set that had tuned into the University of Maryland basketball games. And that reality was not lost on this body.

The number of Americans addicted to cocaine dramatically increased in the 1980s thanks in major part to the escalation in crack use. Hospital emergencies increased by 110 percent in 1986. From 1984 to 1987, cocaine incidents increased fourfold. The crack epidemic was associated with a dramatic increase in drug gang-related violence.

A 1988 study by the Bureau of Justice Statistics found that in New York City, crack use was tied to 32 percent of all homicides and 60 percent of all drug-related homicides.

□ 1340

I would add that even 5 years after the drug bill was considered on this floor there was a growing concern over the crack epidemic which plagued minority neighborhoods. The acclaimed depiction of this scourge was even portrayed in the movie ''New Jack City.'' Director Mario Van Peebles, also one of the main characters in the film, observed that ''the immediate problem is that crack is and was a killer in the Black community today.''

That's what we faced at the time we passed this bill. This is the context of the crack epidemic and the 1986 drug bill. The concern about crack cocaine was, and in my view remains, a valid one. According to the National Institute on Drug Abuse, crack causes faster and shorter highs than powder, which results in more frequent use. Crack cocaine is also associated with gang activities and violence, as evidenced by U.S. Sentencing Commission data. There is, in my view, a basis for disparate treatment of those who traffic in crack versus powder.

Having said that, the inclusion that there is a basis for treating crack and powder differently is in no way a justification for the 100-to-1 sentencing ratio contained in the 1986 drug bill. We initially came out of committee with a 20-to-1 ratio. By the time we finished on the floor, it was 100-to-1. We didn't really have an evidentiary basis for it, but that's what we did, thinking we were doing the right thing at the time.

Certainly, one of the sad ironies in this entire episode is that a bill which was characterized by some as a response to the crack epidemic in African American communities has led to racial sentencing disparities which simply cannot be ignored in any reasoned discussion of this issue. When African Americans, low-level crack defendants, represent 10 times the number of low-level white crack defendants, I don't think we can simply close our eyes.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. SMITH of Texas. Mr. Speaker, I yield the gentleman an additional 1 minute.

Mr. DANIEL E. LUNGREN of California. I thank the gentleman.

Although I cannot, and could not, support the legislation reported out of our committee to completely eliminate any disparity in the treatment of these illicit substances, that is not what we have before us today on this floor. I must say that from a law enforcement standpoint, perhaps the most important factor here is the amount of the substance that is covered. According to narcotics officers I have spoken with, you want to reach the wholesale and mid-level traffickers who often trafficked in 1-ounce quantities.

That is why S. 1789 would raise the amount of crack cocaine necessary to trigger a mandatory 5-year sentence from 5 grams to 28 grams, which is close to the 1 ounce. This does seem to make some sense. It is a fair and just treatment of the problem. It serves the interests of law enforcement in reaching wholesale and mid-level traffickers while reducing the crack powder ratio to 18-to-1 from the current 100-to-1.

I think this is tough but fair. I would not support going further. I support this bill very strongly. I believe that this is what justice should be about. This is a well-crafted bill. It is a good compromise. It serves the ends of justice and fairness. I hope people will support it.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself 30 seconds to make a brief comment.

The gentleman from California just mentioned the 1986 law. We are not blaming anybody for what happened in 1986, but we have had years of experience and have determined that there is no justification for the 100-to-1 ratio. We know that's what we know now, and so we're not blaming anybody for what happened in 1986, but we are fixing what we have learned through years of experience.

I yield 2 minutes to the gentleman from Minnesota (Mr. ELLISON).

Mr. ELLISON. Let me thank Chairman SCOTT, Chairman CONYERS, and also let me thank my colleagues on the other side of the aisle who see the wisdom of moving forward based on what we know about the disparity in crack cocaine sentencing now, what we've learned over the years, thank all of them for yielding to evidence, which I think is so important.

Before I ever came to Congress, Mr. Speaker, I spent the better part of my life representing people in the courts of our country as a public defender and representing them in the courts of our country in Federal and State court, and I saw so many of these cases. I think what disgusted me the most is the human potential that would just be thrown away, as I would have to tell a young person who was caught with crack that if they'd had cocaine they would have a chance at probation, they would be able to really take advantages of treatment and perhaps reconstruct their lives. But because they had crack, their lives were going to be basically over at a pretty young age, thrown away in a cell to have really no real opportunity, be in prison for 10, 5 years for what another person would get probation for. And this made it incredibly difficult to argue that our system of law was fair, that we believed in justice, that we thought it was right and just to treat people the same for doing the same thing.

The fact is, the chemical difference between crack and cocaine is the differences between water and ice. It is the same thing, and you cannot explain to a people that for doing the same thing that they should get 100-to-1 more severe treatment. It doesn't make sense.

So let me just commend people on both sides of the aisle for correcting this severely disproportionate and unfair anomaly in our law enforcement, and I take no blame for anybody. But I will say that there are thousands of people, literally thousands of people, who may get a real chance at life because of a mistake in their drug cases, because of this law.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to my friend and colleague from Texas (Mr. PAUL).

(Mr. PAUL asked and was given permission to revise and extend his remarks.)

Mr. PAUL. I thank the gentleman for yielding.

Mr. Speaker, I rise in support of this legislation. It's called the Fair Sentencing Act. I'd like to rename it, though. I'd like to call it the Slightly Fairer Resentencing Act, because it really makes an attempt to correct a very, very serious problem in equal justice in our systems, and that effort I think we should all applaud. I would have much preferred H.R. 3245. I was an original cosponsor of that along with Congressman SCOTT, but I think this is a typical example of trying to fix a problem that we invite upon ourselves.

In economics, I adhere to the position that once you want to do some good in the economy, with all the best motivations, we do things and we create new problems and we have to go back. If you get two new problems for every intervention, then you're constantly writing laws.

Well, in social policy, I believe the same thing. It was trying to improve social policy with crack cocaine. There was no evidence on this. It was designed to help people, especially the minorities that were using crack cocaine, and they thought this was terrible, and it turned out that its law backfired. It actually hurt minorities, didn't help them. Here we are trying to correct this disparity, and it just, to me, confirms the fact that government management, whether it is the economy or social policy, doesn't make a whole lot of sense.

When this country decided it was very dangerous to drink alcohol and we had to stop it, back in those days, in the teens of the last century, they decided in order for the government to do this they had to amend the Constitution. Can you imagine anybody being concerned today by what we do here and say we have to amend the Constitution? Oh, no. We amended the Constitution. It was a bomb. It made alcohol much more dangerous. All the drug dealers sold the alcohol, and the alcohol was more concentrated and less pure. People died. People woke up and they repealed it.

This is what's going to have to happen someday. We need to repeal the war on drugs.

Mr. SMITH of Texas. Mr. Speaker, I have no further requests for time, and I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 1 minute to the majority leader of the House of Representatives, the gentleman from Maryland (Mr. HOYER).

□ 1350

Mr. HOYER. Mr. Speaker, I rise in support of this legislation and thank Mr. SCOTT for yielding to me.

I also want to thank the former attorney general from California, DAN LUNGREN, for working with me on this issue and JIM SENSENBRENNER and others.

Two decades ago, Congress responded to the addictiveness of crack cocaine, a terrible drug, and the violence it brought in its wake by establishing harsh mandatory sentences for possessing and dealing it. In supporting that policy, Congress also created a wide disparity, however, between crack cocaine and powder cocaine sentences—both addictive, both illegal.

Possessing an amount of crack equal to the weight of two pennies has resulted in a mandatory minimum sentence of 5 years. In order to receive a similar sentence for possessing a chemically similar powder, cocaine, one would have to be carrying 100 times as much cocaine.

It has long been clear that 100-to-1 disparity has had a racial dimension as well, helping to fill our prisons with African Americans disproportionately put behind bars for longer.

The 100-to-1 disparity is counterproductive and unjust. That's not just my opinion, but the opinion of a bipartisan U.S. Sentencing Commission, the Judicial Conference of the United States, the National District Attorneys Association, the National Association of Police Organizations, the Federal Law Enforcement Officers Association, the International Union of Police Associations, and dozens of former Federal judges and prosecutors. They have seen firsthand the damaging effects of our unequal sentencing guidelines up close, and they understand the need to change them. That's what this is about.

The Fair Sentencing Act does that. It also strengthens sentences for those who profit by addicting others to drugs, as it should do.

This bill has overwhelming bipartisan support. Whatever their opinions on drug policies, members of law enforcement, community advocates, and Members of Congress overwhelmingly support this bill. In fact, it passed the Senate unanimously.

In the words of a letter signed by a bipartisan group with sponsors on the Senate Judiciary—Senators LEAHY, SESSIONS, FEINSTEIN, HATCH, SPECTER, GRASSLEY, DURBIN, GRAHAM, CARDIN, CORNYN and COBURN—a very, very bipartisan and broad spectrum group of supporters, they said this: ''Congress has debated the need to address the crack powder disparity for too long. We now have the ability to address this issue on a bipartisan basis.'' They supported this legislation, which is, again, why it passed in a bipartisan fashion through the United States Senate.

My colleagues, I urge support of this legislation. I am pleased that the leadership on both sides of the aisle will be supporting this legislation. We do so for the same reason that Senators CORNYN, HATCH, GRAHAM, and SESSIONS all support their legislation. It's the right thing to do. It will enhance, not diminish prosecution, and it will lead to better justice in America while at the same time making sure that we penalize and hold accountable those who would addict our children and our fellow citizens.

I urge support of this legislation.

Mr. SMITH of Texas. I yield myself the balance of my time.

Mr. Speaker, more than any other drug, the majority of crack defendants have prior criminal convictions. Despite claims by some, this is not an issue of one-time crack users being prosecuted for possession. This is about offenders who perpetually peddled this dangerous drug and should pay the price for their actions.

Despite the devastating impact crack cocaine has had on American communities, this bill reduces the penalties for crack cocaine. Why would we want to do that? We should not ignore the severity of crack addiction or ignore the differences between crack and powder cocaine trafficking. We should worry more about the victims than about the criminals.

Why would we want to reduce the penalties for crack cocaine trafficking and invite a return to a time when cocaine ravaged our communities, especially minority communities?

This bill sends the wrong message to drug dealers and those who traffic in destroying Americans' lives. It sends the message that Congress takes drug crimes less seriously than they did. The bill before us threatens to return America to the days when crack cocaine corroded the minds and bodies of our children, decimated a generation, and destroyed communities.

Mr. Speaker, I hope, sincerely, that those who support this legislation are prepared to take responsibility if cocaine trafficking increases, if our neighborhoods and communities once again become riddled with violence, and the lives of Americans are unnecessarily destroyed.

I hope that doesn't happen, but at least today we have gone on record as saying that there was a warning, and I can only hope that at some point in the future it will be heeded and responded to.

Mr. Speaker, I yield back the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, this bill does not reduce the disparity from 100-to-1 to 1-to-1. It does not eliminate the mandatory minimums, but it is a step in the right direction and, therefore, I urge my colleagues to support S. 1789.

Mr. PAUL. Mr. Speaker, I rise in reluctant support for S. 1789, the Fair Sentencing Act. My support is reluctant because S. 1789 is an uncomfortable mix of some provisions that reduce the harms of the federal war on drugs and other provisions that increase the harms of that disastrous and unconstitutional war. I am supporting this legislation because I am optimistic the legislation's overall effect will be positive.

Congress should be looking critically at how we can extricate America from the four decades of destruction that has ensued since President Richard Nixon announced the federal war on drugs in 1972. As a medical doctor with over 30 years' experience, I certainly recognize the dangers that can arise from drug abuse. However, experience shows that the federal drug war creates many additional dangers, while failing to reduce the problems associated with drug abuse. Like 14 years of federal alcohol prohibition in the 1920s and '30s, America's federal drug war has failed to

ameliorate the problems associated with drug use, while fostering violence and disrespect for individual rights.

While imperfect, I am optimistic that the Senate bill being considered today will reduce the harms of the federal drug war. I also hope consideration of this legislation will enliven interest in ending the federal war on drugs.

It is unfortunate that the House of Representatives is today considering this compromise legislation from the Senate instead of Representative BOBBY SCOTT's H.R. 3245, the Fairness in Cocaine Sentencing Act. I am an original cosponsor of Representative SCOTT's bill, which passed the House of Representatives Committee on the Judiciary on July 29, 2009—one year ago tomorrow. Representative SCOTT's legislation is a short and simple bill that repeals a handful of clauses, sentences, and subparagraphs of federal drug laws to eliminate the 100 to one drug weight basis for sentencing disparity for crack cocaine violations in comparison to powder cocaine violations.

I will vote for the Senate legislation today because it rolls back some of the enhanced mandatory minimum sentences for crack cocaine that the federal government created in 1986. These enhanced mandatory minimum sentences have caused people convicted for small amounts of crack cocaine to serve much longer sentences in prison than people convicted for the same amount of powder cocaine.

While the Senate legislation reduces the drug weight basis for mandatory minimum sentencing disparity between crack cocaine and powder cocaine convictions for many individuals to only 18 to one compared to the total elimination of the disparity in Representative SCOTT's bill, the Senate bill does make a step in the right direction. The Senate bill eliminates entirely the mandatory minimum sentence for simple possession of crack cocaine and reduces significantly the mandatory minimum sentence for many people convicted of crack offenses by raising the number of grams of crack cocaine a person must possess for each mandatory minimum sentence level to apply. In addition, the Senate bill allows courts to show compassion for individuals with compelling cases for leniency by reducing sentences for some people convicted of controlled substances violations who a court determines meet requirements including having minimum knowledge of the illegal enterprise, receiving no monetary compensation from the illegal transaction, and being motivated by threats, fear, or an intimate or family relationship.

Unfortunately, while the Senate bill reduces some of the most extreme and unjust mandatory minimum sentences in the federal drug war, it also contains expansions of the federal drug war that I fear may yield results destructive to individual liberty and public safety. In particular, the Senate bill significantly increases maximum allowed monetary penalties for violations of federal restrictions on controlled substances and increases sentences for people convicted of controlled substances violations whose circumstances include certain aggravating factors.

Some people will argue that the increased penalties in the Senate legislation are desirable because they target people who are high up in the illegal drug trade or who took particularly disturbing actions, such as involving a minor in drug trafficking. But, the history of the federal drug war has shown that ramping up penalties always results in increasing rather than decreasing the harms arising from the federal drug war. Such enhanced penalties increase the risks of the drug trade thus causing illegal drug operations to be more ruthless and violent in their tactics. Enhanced penalties also can result in even more inflated prices for illegal drugs, leading to more thefts by individuals seeking funds to support their drug use. High monetary fines for drug trafficking also tend to provide police and prosecutors with a perverse incentive to focus on nonviolent drug crimes instead of violent crimes.

Each successive ramping up of the federal war on drugs has made it more evident that this war is incompatible with constitutional government, individual liberty, and prosperity. It is time for Congress to reverse course. I am optimistic that S. 1789—even with its faults—may signal that Congress is ready to begin reversing course. It is imperative that the House of Representatives pursue a dialogue on how we can end the federal war on drugs—a war that has increasingly become a war on the American people and our Constitution.

Mr. SCOTT of Virginia. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. SCOTT) that the House suspend the rules and pass the bill, S. 1789.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

LOBBYING DISCLOSURE ENHANCEMENT ACT

Mr. SCOTT of Virginia. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5751) to amend the Lobbying Disclosure Act of 1995 to require registrants to pay an annual fee of $50, to impose a penalty of $500 for failure to file timely reports required by that Act, to provide for the use of the funds from such fees and penalties for reviewing and auditing filings by registrants, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 5751

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Lobbying Disclosure Enhancement Act''.

SEC. 2. LOBBYING DISCLOSURE ACT TASK FORCE.

(a) ESTABLISHMENT.—The Attorney General shall establish the Lobbying Disclosure Act Enforcement Task Force (in this section referred to as the ''Task Force'').

(b) FUNCTIONS.—The Task Force—

(1) shall have primary responsibility for investigating and prosecuting each case referred to the Attorney General under section 6(a)(8) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1605(a)(8)); and

(2) shall collect and disseminate information with respect to the enforcement of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1601 et seq.).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 3. REFERRAL OF CASES TO THE ATTORNEY GENERAL.

Section 6(a) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1605(a)) is amended—

(1) in paragraph (8), by striking ''United States Attorney for the District of Columbia'' and inserting ''Attorney General''; and

(2) in paragraph (11), by striking ''United States Attorney for the District of Columbia'' and inserting ''Attorney General''.

SEC. 4. RECOMMENDATIONS FOR IMPROVED ENFORCEMENT.

The Attorney General may make recommendations to Congress with respect to—

(1) the enforcement of and compliance with the Lobbying Disclosure Act of 1995; and

(2) the need for resources available for the enhanced enforcement of the Lobbying Disclosure Act of 1995

SEC. 5. INFORMATION IN ENFORCEMENT REPORTS.

Section 6(b)(1) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1605(b)(1)) is amended by striking ''by case'' and all that follows through ''public record'' and inserting ''by case and name of the individual lobbyists or lobbying firms involved, any sentences imposed''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. SCOTT) and the gentleman from Utah (Mr. CHAFFETZ) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia.

GENERAL LEAVE

Mr. SCOTT of Virginia. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Lobbying Disclosure Enhancement Act makes several straightforward, commonsense amendments to the enforcement provisions of the Lobbying Disclosure Act.

First, this bill establishes a task force specifically dedicated to the enforcement of our lobbying laws. Although the newspapers are full of stories about lobbyists who file late, inaccurate, and incomplete reports, there has not yet been a single significant enforcement action.

□ 1400

We believe that an institutional change is in order. The task force will receive complaints from the Clerk of the House, investigate these cases, and enforce the disclosure laws to the fullest extent.

Second, this bill asks the Department of Justice to make recommendations to the Congress for additional improvements to the enforcement of lobbying disclosure laws. The ethics reform legislation we passed last Congress was an important step in bringing transparency and accountability to lobbying disclosure, but much more