

111TH CONGRESS
1ST SESSION

H. R. 1466

To concentrate Federal resources aimed at the prosecution of drug offenses on those offenses that are major.

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2009

Ms. WATERS (for herself, Mr. SCOTT of Virginia, Ms. CORRINE BROWN of Florida, Mr. MEEKS of New York, Ms. KILPATRICK of Michigan, Ms. NORTON, Mr. JOHNSON of Georgia, Ms. CLARKE, Mr. COHEN, Mr. HASTINGS of Florida, Mr. ELLISON, Mr. PASTOR of Arizona, Mr. STARK, Ms. FUDGE, Mr. FATTAH, and Mr. DAVIS of Illinois) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To concentrate Federal resources aimed at the prosecution of drug offenses on those offenses that are major.

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.**

4 This Act may be cited as the “Major Drug Traf-
5 ficking Prosecution Act of 2009”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) Since the enactment of mandatory min-
4 imum sentencing for drug users, the Federal Bureau
5 of Prisons budget increased from \$220 million in
6 1986 to \$5.4 billion in 2008.

7 (2) Mandatory minimum sentences are statu-
8 torily prescribed terms of imprisonment that auto-
9 matically attach upon conviction of certain criminal
10 conduct, usually pertaining to drug or firearm of-
11 fenses. Absent very narrow criteria for relief, a sen-
12 tencing judge is powerless to mandate a term of im-
13 prisonment below the mandatory minimum. Manda-
14 tory minimum sentences for drug offenses rely solely
15 upon the weight of the substance as a proxy for the
16 degree of involvement of a defendant's role.

17 (3) Mandatory minimum sentences have con-
18 sistently been shown to have a disproportionate im-
19 pact on African Americans. The United States Sen-
20 tencing Commission, in a 15-year overview of the
21 Federal sentencing system, concluded that "manda-
22 tory penalty statutes are used inconsistently" and
23 disproportionately affect African American defend-
24 ants. As a result, African American drug defendants
25 are 20 percent more likely to be sentenced to prison
26 than white drug defendants.

1 (4) In the Anti-Drug Abuse Act of 1986, Con-
2 gress structured antidrug penalties to encourage the
3 Department of Justice to concentrate its enforce-
4 ment effort against high-level and major-level drug
5 traffickers, and provided new, long mandatory min-
6 imum sentences for such offenders, correctly recog-
7 nizing the Federal role in the combined Federal-
8 State drug enforcement effort.

9 (5) Between 1994 and 2003, the average time
10 served by African Americans for a drug offense in-
11 creased by 62 percent, compared with a 17 percent
12 increase among white drug defendants. Much of this
13 disparity is attributable to the severe penalties asso-
14 ciated with crack cocaine.

15 (6) African Americans, on average, now serve
16 almost as much time in Federal prison for a drug
17 offense (58.7 months) as whites do for a violent of-
18 fense (61.7 months).

19 (7) Linking drug quantity with punishment se-
20 verity has had a particularly profound impact on
21 women, who are more likely to play peripheral roles
22 in a drug enterprise than men. However, because
23 prosecutors can attach drug quantities to an indi-
24 vidual regardless of the level of culpability of a de-
25 fendant's participation in the charged offense,

1 women have been exposed to increasingly punitive
2 sentences to incarceration.

3 (8) In 2003, the States sentenced more than
4 340,000 drug offenders to felony convictions, com-
5 pared to 25,000 Federal felony drug convictions.

6 (9) Low-level and mid-level drug offenders can
7 be adequately prosecuted by the States and punished
8 or supervised in treatment as appropriate.

9 (10) Federal drug enforcement resources are
10 not being properly focused, as only 12.8 percent of
11 powder cocaine prosecutions and 8.4 percent of
12 crack cocaine prosecutions were brought against
13 high-level traffickers, according to the Report to
14 Congress: Cocaine and Federal Sentencing Policy,
15 issued May, 2007 by the United States Sentencing
16 Commission.

17 (11) According to the Report to Congress, “The
18 majority of federal cocaine offenders generally per-
19 form low-level functions . . .”.

20 (12) The Departments of Justice, Treasury,
21 and Homeland Security are the agencies with the
22 greatest capacity to investigate, prosecute and dis-
23 mantle the highest level of drug trafficking organiza-
24 tions, and investigations and prosecutions of low-
25 level offenders divert Federal personnel and re-

1 sources from the prosecution of the highest-level
2 traffickers, for which such agencies are best suited.

3 (13) Congress must have the most current in-
4 formation on the number of prosecutions of high-
5 level and low-level drug offenders in order to prop-
6 erly reauthorize Federal drug enforcement programs.

7 (14) One consequence of the improper focus of
8 Federal cocaine prosecutions has been that the over-
9 whelming majority of low-level offenders subject to
10 the heightened crack cocaine penalties are black and
11 according to the Report to Congress only 8.8 percent
12 of Federal crack cocaine convictions were imposed
13 on whites, while 81.8 percent and 8.4 percent were
14 imposed on blacks and Hispanics, respectively

15 (15) According to the 2002 Report to Congress:
16 Cocaine and Federal Sentencing Policy, issued May,
17 2002 by the United States Sentencing Commission,
18 there is “a widely-held perception that the current
19 penalty structure for federal cocaine offenses pro-
20 motes unwarranted disparity based on race”.

21 (16) African Americans comprise 12 percent of
22 the US population and 14 percent of drug users, but
23 30 percent of all Federal drug convictions.

24 (17) Drug offenders released from prison in
25 1986 who had been sentenced before the adoption of

1 mandatory sentences and sentencing guidelines had
2 served an average of 22 months in prison. Offenders
3 sentenced in 2004, after the adoption of mandatory
4 sentences, were expected to serve almost three times
5 that length, or 62 months in prison.

6 (18) According to the Justice Department, the
7 time spent in prison does not affect recidivism rates.

8 (19) Government surveys document that drug
9 use is fairly consistent across racial and ethnic
10 groups. While there is less data available regarding
11 drug sellers, research finds that drug users generally
12 buy drugs from someone of their own racial or eth-
13 nic background. But almost three-quarters of all
14 Federal narcotics cases are filed against blacks and
15 Hispanics, many of whom are low-level offenders.

16 **SEC. 3. APPROVAL OF CERTAIN PROSECUTIONS BY ATTOR-**
17 **NEY GENERAL.**

18 A Federal prosecution for an offense under the Con-
19 trolled Substances Act, the Controlled Substances Import
20 and Export Act, or for any conspiracy to commit such an
21 offense, where the offense involves the illegal distribution
22 or possession of a controlled substance in an amount less
23 than that amount specified as a minimum for an offense
24 under section 401(b)(1)(A) of the Controlled Substances
25 Act (21 U.S.C. 841(b)(1)(A)) or, in the case of any sub-

1 stance containing cocaine or cocaine base, in an amount
2 less than 500 grams, shall not be commenced without the
3 prior written approval of the Attorney General.

4 **SEC. 4. MODIFICATION OF CERTAIN SENTENCING PROVI-**
5 **SIONS.**

6 (a) SECTION 404.—Section 404(a) of the Controlled
7 Substances Act (21 U.S.C. 844(a)) is amended—

8 (1) by striking “not less than 15 days but”;

9 (2) by striking “not less than 90 days but”;

10 (3) by striking “not less than 5 years and”; and

11 (4) by striking the sentence beginning “The im-
12 position or execution of a minimum sentence”.

13 (b) SECTION 401.—Section 401(b) of the Controlled
14 Substances Act (21 U.S.C. 841(b)) is amended—

15 (1) in paragraph (1)(A)—

16 (A) by striking “which may not be less
17 than 10 years and or more than” and inserting
18 “for any term of years or for”;

19 (B) by striking “and if death” the first
20 place it appears and all that follows through
21 “20 years or more than life” the first place it
22 appears;

23 (C) by striking “which may not be less
24 than 20 years and not more than life imprison-

1 ment” and inserting “for any term of years or
2 for life”;

3 (D) by inserting “imprisonment for any
4 term of years or” after “if death or serious bod-
5 ily injury results from the use of such substance
6 shall be sentenced to”;

7 (E) by striking the sentence beginning “If
8 any person commits a violation of this subpara-
9 graph”;

10 (F) by striking the sentence beginning
11 “Notwithstanding any other provision of law”
12 and the sentence beginning “No person sen-
13 tenced”; and

14 (2) in paragraph (1)(B)—

15 (A) by striking “which may not be less
16 than 5 years and” and inserting “for”;

17 (B) by striking “not less than 20 years or
18 more than” and inserting “for any term of
19 years or to”;

20 (C) by striking “which may not be less
21 than 10 years and more than” and inserting
22 “for any term of years or for”;

23 (D) by inserting “imprisonment for any
24 term of years or to” after “if death or serious

1 bodily injury results from the use of such sub-
2 stance shall be sentenced to”;

3 (E) by striking the sentence beginning
4 “Notwithstanding any other provision of law”.

5 (c) SECTION 1010.—Section 1010(b) of the Con-
6 trolled Substances Import and Export Act (21 U.S.C.
7 960(b)) is amended—

8 (1) in paragraph (1)—

9 (A) by striking “of not less than 10 years
10 and not more than” and inserting “for any
11 term of years or for”;

12 (B) by striking “and if death” the first
13 place it appears and all that follows through
14 “20 years and not more than life” the first
15 place it appears;

16 (C) by striking “of not less than 20 years
17 and not more than life imprisonment” and in-
18 serting “for any term of years or for life”;

19 (D) by inserting “imprisonment for any
20 term of years or to” after “if death or serious
21 bodily injury results from the use of such sub-
22 stance shall be sentenced to”;

23 (E) by striking the sentence beginning
24 “Notwithstanding any other provision of law”;
25 and

1 (2) in paragraph (2)—

2 (A) by striking “not less than 5 years
3 and”;

4 (B) by striking “of not less than twenty
5 years and not more than” and inserting “for
6 any term of years or for”;

7 (C) by striking “of not less than 10 years
8 and not more than” and inserting “for any
9 term of years or to”;

10 (D) by inserting “imprisonment for any
11 term of years or to” after “if death or serious
12 bodily injury results from the use of such sub-
13 stance shall be sentenced to”;

14 (E) by striking the sentence beginning
15 “Notwithstanding any other provision of law”.

16 (d) SECTION 418.—Section 418 of the Controlled
17 Substances Act (21 U.S.C. 859) is amended by striking
18 the sentence beginning “Except to the extent” each place
19 it appears and by striking the sentence beginning “The
20 mandatory minimum”.

21 (e) SECTION 419.—Section 419 of the Controlled
22 Substances Act (21 U.S.C. 860) is amended by striking
23 the sentence beginning “Except to the extent” each place
24 it appears and by striking the sentence beginning “The
25 mandatory minimum”.

1 (f) SECTION 420.—Section 420 of the Controlled
2 Substances Act (21 U.S.C. 861) is amended—

3 (1) in each of subsections (b) and (c), by strik-
4 ing the sentence beginning “Except to the extent”;

5 (2) by striking subsection (e); and

6 (3) in subsection (f), by striking “, (c), and (e)”
7 and inserting “and (c)”.

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