Floor Statement of Rep. Lamar Smith (R-Tex.)

Editor’s Note: On July 28, 2010, the Fair Sentencing Act of 2010 was debated and passed by the U.S. House of Representatives. It was signed into law by President Obama on August 3, 2010. The bill reduces the difference between the amounts of powder and crack cocaine necessary to trigger statutory mandatory minimum penalties from the former 100-1 ratio to 18-1 and eliminates the five-year mandatory minimum sentence for the simple possession of five grams of crack cocaine. The bill was cosponsored by Democrats and Republicans and passed by voice vote. Only one congressman spoke against passage of the bill, Rep. Lamar Smith, Republican of Texas, who was in 2010 the ranking Republican member of the House Judiciary Committee and who, now that control of the House has reverted to the Republicans, is likely to become chair of that committee. Accordingly, Congressman Smith’s remarks are of special interest insofar as they illuminate his views on drug enforcement, sentencing policy, and criminal justice generally.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.1

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 500 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. Mr. Speaker, for these reasons, I urge my colleagues to oppose this legislation. I reserve the balance of my time.

[Other speakers of both parties spoke after Rep. Smith, all supporting the bill. Rep. Smith then closed the debate for the Republican side with the following additional remarks.]

Mr. SMITH of Texas. I yield myself the balance of my time.2

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.

Notes


2 Id. at H6203.