

DISAPPROVAL OF CERTAIN SENTENCING GUIDELINE
AMENDMENTS

SEPTEMBER 29, 1995.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. McCOLLUM, from the Committee on the Judiciary,
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 2259]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill
(H.R. 2259) to disapprove certain sentencing guideline amend-
ments, having considered the same, report favorably thereon with-
out amendment and recommend that the bill do pass.

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The language of the bill, as ordered reported, without amend-
ment, is as follows:

SECTION 1. DISAPPROVAL OF AMENDMENTS RELATING TO EQUALIZATION OF CRACK AND COCAINE POWER QUANTITIES FOR TRAFFICKING OFFENSES.

In accordance with section 994(p) of title 28, United States Code, Amendment number 5 of the "Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary", submitted by the United States Sentencing Commission to Congress on May 1, 1995, is hereby disapproved and shall not take effect to the extent it—

- (1) amends §2D1.1(c) (1) through (14) of the sentencing guidelines;
- (2) inserts the following sentence in §2D1.1(c) of the sentencing guidelines: " 'Cocaine,' for the purpose of this guideline, includes cocaine hydrochloride, cocaine base, and crack cocaine."; and
- (3) deletes "1 gm of Cocaine Base ('Crack') = 20 kg of marihuana" from the Commentary to §2D1.1 of the sentencing guidelines captioned "Application Notes" in Note 10 in the subdivision captioned "Cocaine and Other Schedule I and II Stimulants".

SEC. 2. DISAPPROVAL OF AMENDMENTS RELATING TO EQUALIZATION OF CRACK AND COCAINE POWER QUANTITIES FOR POSSESSION OFFENSES.

In accordance with section 994(p) of title 28, United States Code, Amendment number 5 of the "Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary", submitted by the United States Sentencing Commission to Congress on May 1, 1995, is hereby disapproved and shall not take effect to the extent it amends section 2D2.1.

SEC. 3. DISAPPROVAL OF AMENDMENTS RELATING TO MONEY LAUNDERING AND TRANSACTIONS IN PROPERTY DERIVED FROM UNLAWFUL ACTIVITY.

In accordance with section 994(p) of title 28, United States Code, Amendment number 18 of the "Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary", submitted by the United States Sentencing Commission to Congress on May 1, 1995, is hereby disapproved and shall not take effect.

PURPOSE AND SUMMARY

The purpose of H.R. 2259 is to prevent the U.S. Sentencing Commission's proposed amendments to the federal sentencing guidelines regarding penalties for crack cocaine and money laundering from taking effect. Those two amendments would result in reduced sentences for certain crack cocaine-related and money laundering offenses. In preventing the amendments from taking effect, the bill will preserve the current sentences for those offenses. H.R. 2259 will permit the other 25 of the Sentencing Commission's amendments to go into effect.

The bill includes three sections. Section 1 disapproves the Commission's recommended amendment to equalize the penalties for distributing crack and powder cocaine, thereby preserving the current guideline sentences for crack cocaine trafficking offenses. The Commission's amendment would modify the quantity thresholds which are used to determine a sentencing range. The resulting sentencing range would fall below the statutory mandatory minimum sentences for that offense, thus resulting in greatly reduced sentences for crack cocaine trafficking offenses than is currently the case. The Administration supports this section of H.R. 2259.

Section 2 disapproves the amendment relating to sentences associated with the possession of crack and powder cocaine, thereby preserving the current guideline sentences for crack cocaine possession offenses. The Administration supports the Commission's proposal in this area. In rejecting the Commission's recommendation to treat the possession of crack in the same manner as simple possession of cocaine powder, supporters of H.R. 2259 recognize that the possession of even relatively small amounts of crack is frequently inseparable from the trafficking of crack. The statute which creates the present 100-to-1 ratio for crack possession of-

fenses (21 U.S.C. 844) was established in response to the unique nature of the crack cocaine trafficking trade, which often entails trafficking in much smaller quantities of crack cocaine than with powder cocaine. Consequently, an offender caught with 5 grams or more of crack cocaine, as provided under the statute, can be reasonably presumed to be trafficking even though the quantity possessed is relatively small. While 21 U.S.C. 844 is a possession offense, it presumes that an offender who possesses 5 grams of crack generally possesses it with the intent to distribute. As a result, H.R. 2259 properly avoids making an artificial distinction between possession of 5 grams or more of crack and distribution of crack.

Section 3 of H.R. 2259 disapproves the Sentencing Commission's proposed amendment to the sentencing guidelines for money laundering offenses, thereby maintaining the current guideline sentences for the relevant money laundering offenses. The Commission's proposed amendment would substantially reduce the penalties for laundering proceeds of both financial and drug offenses. The Administration supports section 3.

BACKGROUND AND NEED FOR THE LEGISLATION

On May 1, 1995, pursuant to the Sentencing Reform Act of 1984, the U.S. Sentencing Commission submitted to Congress proposed amendments to the sentencing guidelines. The 27 proposed amendments include reduced penalties for crack cocaine and money laundering, clarification of guideline enhancements for sex offenses and non-narcotic drug trafficking, and adjustments to the guidelines in conformity with mandatory minimum penalties enacted in the 1994 Crime Act. Under the Sentencing Reform Act of 1984, the Commission's amendments to the sentencing guidelines are to take effect November 1, 1995, unless Congress intervenes.

On June 29, 1995, the Judiciary Committee's Crime Subcommittee held a hearing to examine the Sentencing Commission's recommended changes to the sentencing guidelines that would equalize penalties for similar quantities of crack and powder cocaine. Many of the hearing witnesses, including members of the Sentencing Commission, acknowledged important differences between crack and powder cocaine: crack is more addictive than powder cocaine; it accounts for more emergency room visits; it is most popular among juveniles; it has a greater likelihood of being associated with violence; and crack dealers have more extensive criminal records than other drug dealers and tend to use young people to distribute the drug at a greater rate. In short, the evidence overwhelmingly demonstrates significant distinctions between crack and powder cocaine. Importantly, with regard to the question of racial disparity, the Sentencing Commission's own report states, "Clearly, the penalties apply equally to similar defendants, regardless of race. * * * [T]here is no evidence that Congress or the Sentencing Commission acted with any discriminatory intent in setting different statutory guideline penalties for different forms of cocaine." The Administration expressed its opposition to the Commission's proposal to reduce the penalties for crack cocaine trafficking offenses.

On June 22, 1995, the Judiciary Committee's Crime Subcommittee heard compelling testimony from law enforcement leaders of

the District of Columbia, including the police chief, the U.S. Attorney, and the chief judge about the effects of crack cocaine on the nation's capital. They warned Congress, in unmistakable terms, not to lower crack penalties to those of powder cocaine offenses, because of the more destructive nature of the crack market.

While the evidence clearly indicates that there are significant distinctions between crack and powder cocaine that warrant maintaining longer sentences for crack-related offenses, it should be noted that the current 100-to-1 quantity ratio may not be the appropriate ratio. The goal must ultimately be to ensure that the uniquely harmful nature of crack is reflected in sentencing policy and, at the same time, uphold basic principles of equity in the U.S. Code.

It is important to note that if the Commission's guideline amendments went into effect without Congress lowering the current statutory mandatory minimum penalties, it would create gross sentencing disparities. Sentences just below the statutory minimum would be drastically reduced, but mandatory minimums would remain much higher. For example, an offender convicted of distributing 5 grams of crack would, under the statutory mandatory minimum penalty, face a mandatory prison term of 5 years; however, an offender convicted of distributing 4.9 grams of crack could, under the Commission's amendment to the guidelines, receive a sentence within a range of 0-6 months of imprisonment. The Commission's crack-related guideline amendments would establish penalties for crimes that stand in sharp contrast with statutory mandatory minimum penalties.

The Administration opposes the Commission's money laundering amendment. Prosecutors would be deprived of an important law enforcement tool if the Commission's money laundering amendment took effect. The current money laundering penalties are a critical means of attacking criminal enterprises that engage in a wide variety of illegal activities, and whose very existence depends on their ability to deposit and launder the proceeds from these activities. Consequently, stiff sentences, which treat the act of money laundering itself as a serious offense, should be preserved.

HEARINGS

The Committee's Subcommittee on Crime held 1 day of hearings on June 29, 1995 on the Sentencing Commission's recommended changes to the sentencing guidelines that would equalize penalties for similar quantities of crack and powder cocaine. Testimony was received from 11 witnesses on three panels. The first panel consisted of members of the Sentencing Commission. They were: Richard Conaboy, Chairman, and U.S. District Judge, Eastern District of Pennsylvania; Wayne Budd, commissioner; Deanell Tacha, Commissioner, and 10th U.S. Circuit Court of Appeals. The second panel consisted of one witness: Joann Harris, Assistant Attorney General, Criminal Division, U.S. Department of Justice. The third panel consisted of seven witnesses. They were: Judge Lyle Strom, U.S. District Court Judge, District of Nebraska; Wade Henderson, Director, NAACP; Richard Cullen, Former United States Attorney, Eastern District of Virginia, and Member, Virginia Sentencing Commission; Dr. Herbert Kleber, Executive Vice President and

Medical Director, Center on Addiction and Substance Abuse (CASA), Columbia University; Tim Nelson, Special Agent, North Carolina State Bureau of Investigation; and Dr. Jeffery Fagan, Professor of Criminal Justice, Rutgers University.

COMMITTEE CONSIDERATION

On September 9, 1995, the Committee met in open session and ordered the bill favorably reported, by a 21-11 recorded vote, without amendment, a quorum being present. The recorded vote was subsequently vitiated by unanimous consent, and the bill was reported favorably by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

The Committee considered the following amendments:

Mr. Conyers offered an amendment in the nature of a substitute to postpone the effective date of the guideline amendments relating to cocaine and money laundering until May 1, 1996. The Conyers amendment was defeated by a 10-21 roll call vote.

Rollcall 1

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Frank	Mr. Moorhead
Mr. Berman	Mr. Sensenbrenner
Mr. Boucher	Mr. McCollum
Mr. Bryant (TX)	Mr. Gekas
Mr. Reed	Mr. Coble
Mr. Nadler	Mr. Smith (TX)
Mr. Scott	Mr. Schiff
Ms. Lofgren	Mr. Gallegly
Ms. Jackson-Lee	Mr. Canady
	Mr. Inglis
	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Watt

Mr. Watt motioned to reconsider the vote by which the Conyers amendment was defeated. The motion was defeated by a 12-20 roll call vote.

Rollcall 2

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Frank	Mr. Sensenbrenner
Mr. Berman	Mr. McCollum

Mr. Boucher	Mr. Gekas
Mr. Reed	Mr. Coble
Mr. Nadler	Mr. Smith (TX)
Mr. Scott	Mr. Schiff
Mr. Watt	Mr. Gallegly
Mr. Becerra	Mr. Canady
Ms. Lofgren	Mr. Inglis
Ms. Jackson-Lee	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TX)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr

Motion to report H.R. 2259 favorably. Final Passage. Adopted 21–11. (Subsequently vitiated by unanimous consent. Adopted by voice vote.)

Rollcall 3

AYES	NAYS
Mr. Hyde	Mr. Conyers
Mr. Moorhead	Mrs. Schroeder
Mr. Sensenbrenner	Mr. Frank
Mr. McCollum	Mr. Berman
Mr. Gekas	Mr. Boucher
Mr. Coble	Mr. Nadler
Mr. Smith (TX)	Mr. Scott
Mr. Schiff	Mr. Watt
Mr. Gallegly	Mr. Becerra
Mr. Canady	Ms. Lofgren
Mr. Inglis	Ms. Jackson-Lee
Mr. Goodlatte	
Mr. Buyer	
Mr. Hoke	
Mr. Bono	
Mr. Heineman	
Mr. Bryant (TN)	
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	
Mr. Reed	

Motion to authorize the Chairman to move to go to conference. The motion was agreed to 23–10.

Rollcall 4

AYES	NAYS
Mr. Hyde	Mr. Conyers
Mr. Moorhead	Mrs. Schroeder
Mr. Sensenbrenner	Mr. Frank
Mr. McCollum	Mr Bryant (TX)

Mr. Gekas	Mr. Nadler
Mr. Coble	Mr. Scott
Mr. Smith (TX)	Mr. Watt
Mr. Schiff	Mr. Becerra
Mr. Gallegly	Ms. Lofgren
Mr. Canady	Mr. Jackson-Lee
Mr. Inglis	
Mr. Goodlatte	
Mr. Buyer	
Mr. Hoke	
Mr. Bono	
Mr. Heineman	
Mr. Bryant (TN)	
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	
Mr. Berman	
Mr. Boucher	
Mr. Reed	

Mr. Watt motioned to reconsider vote of the Conyers amendment to strike the section which prevents the reduction of crack cocaine possession penalties from taking effect. The motion was defeated 11–22.

Rollcall 5

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Frank	Mr. Sensenbrenner
Mr. Berman	Mr. McCollum
Mr. Boucher	Mr. Gekas
Mr. Nadler	Mr. Coble
Mr. Scott	Mr. Smith (TX)
Mr. Watt	Mr. Schiff
Mr. Becerra	Mr. Gallegly
Ms. Lofgren	Mr. Canady
Ms. Jackson-Lee	Mr. Inglis
	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Bryant (TN)

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Rep-

representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2259, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 27, 1995.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2259, a bill to disapprove certain sentencing guideline amendments, as ordered reported by the House Committee on the Judiciary on September 12, 1995. CBO estimates that implementing H.R. 2259 would result in additional costs to the federal government to accommodate more prisoners in federal prisons. We estimate that the cost of enacting the bill would be about \$15 million in fiscal year 1996 and would increase to about \$90 million in fiscal year 2000, subject to the availability of appropriations. Those amounts represent the estimated cost of forgoing an expected decrease in spending requirements that would occur under current law. Enacting H.R. 2259 also could affect direct spending and receipts, so pay-as-you-go procedures would apply. However, we estimate that any increases in direct spending and receipts would be less than \$500,000 annually.

In May 1995, the U.S. Sentencing Commission submitted to Congress proposed amendments to the sentencing guidelines for a variety of federal crimes. Under current law, these amendments will take effect on November 1, 1995, unless Congress intervenes. H.R. 2259 would nullify certain amendments relating to crack cocaine and money laundering offenses.

Taken together, the Sentencing Commission's amendments relating to crack cocaine and money laundering offenses would result in shorter prison terms for offenders. Therefore, enacting H.R. 2259 would maintain the current longer prison terms and thus increase costs to the federal prison system—relative to the expected costs for the shorter terms that would be put in place under current law.

In other words, the bill would maintain current spending requirements per prisoner, instead of allowing shorter prison terms to take effect. According to the U.S. Sentencing Commission, each year about 5,000 individuals would be affected by the bill's provisions. Sentences in cocaine and money laundering cases vary widely, but according to the U.S. Sentencing Commission, enacting H.R. 2259 would increase the average sentence by about two years more than the average under the commission's guidelines. The annual cost of incarcerating an inmate is about \$20,000.

Assuming no significant change in the number of convictions, CBO estimates that the cost to the prison system gradually grow to roughly \$200 million annually at current prices. However, that level would not be reached for up to 30 years. Based on the U.S. Sentencing Commission's prison impact model, which predicts the distribution of sentences over time, we estimate that the additional cost would be about \$15 million in fiscal year 1996 and would increase to about \$90 million by the year 2000, subject to the availability of appropriations.

Relative to the Sentencing Commission's proposed amendments, H.R. 2259 would provide for increased criminal fines. Therefore, enacting the bill could increase governmental receipts through greater penalty collections, but we estimate that any such increase would be less than \$500,000 annually. Criminal fines would be deposited in the Crime Victims Fund and would be spent in the following year. Thus, direct spending from the fund would match the increase in revenues with a one-year lag.

Because this bill would not require state courts to impose these sentencing provisions, CBO estimates that enacting H.R. 2259 would not result in any costs to states or localities.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, *Director*).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 2259 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Disapproval of amendments relating to equalization of crack and cocaine powder quantities for trafficking offenses

This section disapproves that part of Amendment 5 which would equalize the penalties in the federal sentencing guidelines for distributing crack and powder cocaine. Consequently, this section prevents Amendment 5 from taking effect to the extent that it would amend section 2D1.1(c) of the sentencing guidelines, and treat crack cocaine and powder cocaine the same for purposes of determining sentences for crack and powder trafficking offenses. The Commission's proposed amendment to section 2D1.1(c) would modify the quantity thresholds, which determine prison sentences

under the sentencing guidelines below statutory mandatory minimum sentences. As an amendment to the guidelines, the Commission's proposed amendment would be powerless to effect the statutory mandatory minimums, but would significantly alter those guideline sentences imposed for crack amounts below the statutory mandatory minimum amounts, drastically reducing them, while the mandatory minimums would remain much higher. The effect would be to create significant sentencing disparities for offenses involving minor quantity differences. For example, an offender convicted of distributing 5 grams of crack would, under the statutory mandatory minimum penalty, face a mandatory prison term of 5 years; however, an offender convicted of distributing 4.9 grams of crack could, under the Commission's amendment to the guidelines, receive a sentence within a range of 0–6 months of imprisonment.

Sec. 2. Disapproval of amendments relating to equalization of crack and cocaine powder quantities of possession offenses

This section disapproves that part of Amendment 5 which would equalize the penalties in the federal sentencing guidelines for possessing crack and powder cocaine. Consequently, this section prevents Amendment 5 from taking effect to the extent that it would amend section 2D2.1 of the sentencing guidelines and treat crack cocaine and powder cocaine the same for purposes of determining sentences for crack and powder possession offenses. The Commission's recommended changes to section 2D2.1 would modify the quantity thresholds which determine prison sentences affecting guideline sentences below statutory mandatory minimum sentences. As with the part of Amendment 5 addressed by Section 1, this part of Amendment 5 which addresses possession offenses would drastically alter those guideline sentences below the statutory mandatory minimum sentences, leaving them in sharp contrast with the mandatory minimums.

H.R. 2259 allows to take effect that section of Amendment 5 which increases the sentences for drug-related offenses involving dangerous weapons. That section of the Commission's amendment would modify section 2D1.1(b)(1)) of the guidelines by deleting the subsection which increases the sentence by 2 offense levels if a dangerous weapon (including a firearm) was possessed during the offense. That subsection would be replaced by a new subsection providing for three different sentence increases.

The new subsection provides for an increase of 6 offense levels if the defendant discharged a firearm, unless the resulting offense level is less than level 24, in which case the offense level is increased to level 24. The subsection further provides for an increase of 4 offense levels if the defendant brandished or otherwise used a dangerous weapon (including a firearm), unless the resulting offense level is less than level 19, in which case the offense level is increased to level 19. The subsection further provides for an increase of 3 offense levels if a dangerous weapon (including a firearm) was possessed, unless the dangerous weapon was a firearm and the resulting offense level is less than level 18, in which case the offense level is increased to level 18.

Sec. 3. Disapproval of amendments relating to money laundering and transactions in property derived from unlawful activity

This section disapproves Amendment 18 to the sentencing guidelines. This proposed amendment would substantially reduce the penalties for laundering proceeds of both financial and drug offenses, by deleting sections 2S1.1 and 2S1.2 of the sentencing guidelines, and replacing them with reduced base offense levels. Current sentencing guidelines treat various acts of concealing the proceeds of illegal activity the same, regardless of the penalties for the underlying criminal activity attempting to be concealed. The Commission's amendment would reduce the sentences for acts of money laundering for certain categories of "less serious" criminal activities. The effect would be to reduce sentences for the crime of money laundering substantially in many cases. For example, under current guidelines, an offender who launders more than \$100,000 worth of fraud proceeds by engaging in a financial transaction designed to conceal the source of the funds would be subject to a sentence of 37–46 months. If the amendment to the guidelines took effect, the guideline range would be 21–27 months imprisonment.

AGENCY VIEWS

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, May 12, 1995.

Hon. NEWT GINGRICH,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Enclosed is a legislative proposal to disapprove certain sentencing guideline amendments recently submitted to Congress by the United States Sentencing Commission for a 180-day review period. The amendments proposed for Congressional disapproval relate to two areas—(1) equalization of cocaine base (crack) and cocaine powder quantities for drug trafficking penalties, and (2) revision of the guidelines applicable to money laundering and transactions in property derived from unlawful activity. These sentencing guideline amendments will take effect November 1, 1995, unless an Act of Congress provides otherwise.

The legislative proposal would disapprove and prevent the taking effect of the two sentencing guideline amendments described above. The guideline amendments relating to crack, which were adopted by a divided Sentencing Commission, would drastically reduce crack guideline penalties without recognizing the significant differences between crack and cocaine powder. Crack is a more dangerous and harmful substance than cocaine powder for a number of reasons. It is the more psychologically addictive of the two substances through the most common routes of administration. Additionally, the open-air street markets and crack houses used for the distribution of crack, which can be broken down and packaged into very small and inexpensive quantities for distribution to the most vulnerable members of society, contribute heavily to the deterioration of neighborhoods and communities. Finally, the guideline amendments relating to crack are inconsistent with current mandatory minimum penalties.

The Sentencing Commission's amendments to the money laundering guidelines are sweeping in nature and would substantially lower the penalties for many serious money laundering offenses despite the fact that Congress has treated money laundering as a significant offense subject to 10- or 20-year maximum penalties. The amendments would produce reductions in sentence with respect to the laundering of proceeds of both financial and drug offenses.

We urge early consideration of this important legislative proposal to prevent these unsatisfactory sentencing guideline amendments from taking effect. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's programs to the presentation of this legislative proposal.

Sincerely,

KENT MARKUS,
Acting Assistant Attorney General.

ANALYSIS

On May 1, 1995, the United States Sentencing Commission submitted to Congress amendments to the sentencing guidelines, policy statements, and official commentary in a number of areas. Such amendments will take effect November 1, 1995, unless an Act of Congress provides otherwise. The bill would overturn amendments relating to two of the areas—(1) equalization of cocaine base and cocaine powder quantities for drug trafficking penalties, and (2) revision of the guidelines applicable to money laundering and transactions in property derived from unlawful activity.

By way of background, the United States Sentencing Commission has the power to promulgate amendments to the sentencing guidelines. However, the Commission must submit such amendments to Congress for at least a 180-day review period. Sentencing Guideline amendments take effect no later than November 1 of the calendar year in which submitted, "except to the extent that . . . the amendment is otherwise modified or disapproved by Act of Congress." 28 U.S.C. § 994(p). The bill would implement this provision by disapproving the Sentencing Commission's amendments with respect to cocaine base and money laundering.

The sentencing guideline amendments relating to cocaine base (usually known as "crack"), which were adopted by a 4-3 vote of the Commission, would drastically reduce crack penalties without recognizing the significant differences between crack and cocaine hydrochloride (cocaine powder). Crack is a more dangerous and harmful substance than cocaine powder for a number of reasons. The most common routes of administration of the two drugs cause crack to be the more psychologically addictive of the substances, particularly because smoking crack produces quicker, more intense, and shorter-lasting effects than snorting cocaine powder. Identifiable social and behavioral changes occur much more quickly with the use of crack than with the use of cocaine powder. Crack can also be broken down and packaged into very small and inexpensive quantities for distribution and is thereby marketed to the most vulnerable members of society, including those of lower socioeconomic status and youth. Additionally, the open-air street markets and crack houses used for the distribution of crack contribute heavily to the deterioration of neighborhoods and communities. Finally, the

present crack market is associated with violent crime to a greater extent than that of cocaine powder.

Despite these realities, the Sentencing Commission has taken two steps to lower crack penalties to precariously low levels. First, the Commission has recommended that Congress eliminate the differential treatment of crack and cocaine powder in the mandatory minimum penalties currently provided by statute. In addition, the Commission has submitted an amendment of the sentencing guidelines to treat crack and cocaine powder alike under the guidelines, regardless of whether Congress first revises the statutory minimum penalties. As a result, an offender convicted of distributing 50 grams of crack (about 500 doses), for whom the relevant statute imposes a mandatory minimum 10-year term of imprisonment, would face a guideline sentence of just 21–27 months of imprisonment. If such an offender accepted responsibility for his or her offense, the sentencing guideline range would be 12–18 months of imprisonment. If the court found that such an offender had also played a minimal role in the offense, the sentencing guideline range would be just 4–10 months of imprisonment, which could be satisfied by probation with conditions of confinement, such as home detention. Offenses now subject to a 5-year mandatory minimum prison term (involving at least 5 grams of crack) would potentially be subject to a sentencing guideline range of just 0–6 months of imprisonment if the defendant accepted responsibility for the offense and were a minor player.

From the above it can be seen that if Congress adopts the Commission's recommendation to treat crack and cocaine powder alike for purposes of the mandatory minimum penalties, some offenses now subject to a 5- or 10-year mandatory minimum prison term will potentially result in a sentence involving no required prison term at all.

Even if Congress does not adopt the Commission's recommendation as to mandatory minimum penalties for crack, the sentencing guideline amendments the Commission has submitted create serious problems. The low guideline sentences bring about inconsistency between the guidelines and the current statutory scheme, with the result that mandatory minimum sentences will override many guideline sentences and produce sharp cliffs in sentencing, as well as resentment among those subject to the statutory penalties. The sentencing guidelines should work in concert with, rather than in opposition to, mandatory minimum sentences. Moreover, the low guideline sentences will prevail in the case of crack offenders subject to the "safety-valve" exemption from mandatory minimum sentences, 18 U.S.C. §3553(f). The implementation of these low sentences for "safety-valve" defendants may also violate the statutory requirement that guidelines implementing the "safety-valve" must provide a guideline range in which the lowest term of imprisonment is at least 24 months for defendants who would have been subject to a mandatory minimum 5-year sentence. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103–322, §80001(b)(1)(B). The drastic reduction in guideline sentences for crack will result in safety-valve sentences under §5C1.2 of the sentencing guidelines lower than 24 months in certain cases, as described above.

For the reasons set forth, Congress should disapprove the equalization of crack and cocaine powder sentences in the sentencing guidelines, as provided in section 1 of the proposed legislation. While Section 1 would result in the disapproval of those portions of sentencing guideline amendment number 5 that would equalize crack and cocaine powder trafficking penalties, it would not affect other portions of the amendment. For example, the legislative proposal would not affect the portions of the amendment that provide enhanced sentences for the use or possession of a weapon in the case of any drug trafficking offense or that delete the definition of "cocaine base." Nor would the legislative proposal affect the amended guidelines' treatment of simple possession of crack in the same manner as simple possession of cocaine powder. (Of course, current mandatory minimum penalties pertaining to the simple possession of certain quantities of crack would continue to apply unless repealed by Congress.)

Without Congressional action disapproving the guidelines, the amendments will go into effect November 1, 1995. While the Department of Justice recognizes that some adjustment of the current penalty structure may be appropriate, any such adjustment must reflect the greater dangers associated with crack than cocaine powder.

Section 2 of the proposed legislation addresses sentencing guideline amendments submitted by the Sentencing Commission to Congress relating to money laundering and transactions in property derived from unlawful activity. The amendments were the product of intense lobbying by the white-collar defense bar to lower penalties for money laundering and related activity. The guideline amendments are sweeping in nature and would substantially lower the penalties for many serious money laundering to be a significant offense subject to 10- or 20-year maximum penalties (depending upon the offender's intent).

The amendments would produce reductions in sentence with respect to the laundering of proceeds of both financial offenses and drug offenses. For example, under the current guidelines an offender who launders \$110,000 worth of proceeds of a fraud by engaging in a financial transaction knowing that the transaction is designed to conceal the source of the illegal funds (and is convicted of violating 18 U.S.C. § 1956(a)(1)(B)(i)) would face a current guideline sentence of 37–46 months of imprisonment under § 2S1.1 of the sentencing guidelines. Under the amended guideline submitted to Congress, the guideline range would be just 21–27 months of imprisonment. An offender who commits a similar offense involving \$110,000 worth of illegal drug proceeds would face a current guideline sentence of 51–63 months of imprisonment. Under the recently submitted guideline amendments the guideline sentence would be just 33–41 months of imprisonment.

The Commission's guideline changes appear to respond in part to the class of money laundering cases in which the money laundering activity is not extensive, including "receipt and deposit" cases—those in which the money laundering conduct is limited to depositing the proceeds of unlawful activity in a financial institution account identifiable to the person who committed the underlying offense. While the application of the current guidelines to receipt-

and-deposit cases, as well as to certain other cases that do not involve aggravated money laundering activity, may be problematic—and the Department of Justice proposed to the Sentencing Commission a sentencing guideline amendment that would have addressed this problem while preserving appropriately tough sentences for serious money laundering activities—past sentencing anomalies arising from relatively few cases do not justify a sweeping downward adjustment in the money laundering guidelines.

The broad changes in money laundering sentences reflected in the Commission's guideline amendments, if allowed to stand, will send a dangerous message that money laundering associated with drug and other serious crimes is not viewed as the grave offense it once was.

DISSENTING VIEWS

On September 12, 1995, the Republican majority on the House Judiciary Committee had the opportunity to eliminate the disparity in sentences between crack cocaine and powder cocaine offenses. The Committee could have eliminated blatantly discriminatory federal laws. Regrettably, the majority opted instead to perpetuate these discriminatory laws by passing and reporting out H.R. 2259, which disapproves the recommendations of the U.S. Sentencing Commission to eliminate the disparities in federal sentencing for crack cocaine and powder cocaine offenses.

In response to complaints from the federal bench, the criminal defense bar, family members of convicted crack defendants and civil rights groups, Congress directed the Sentencing Commission in the 1994 Crime Bill to examine the obvious disparity in sentences for crack and powder offenses. Overwhelming evidence was presented to support the unanimous conclusion of the Commission members that the current 100-to-1 disparity for crack trafficking versus powder trafficking offenses cannot be justified¹ and mandatory minimum sentences for simple possession of crack must be eliminated. By rejecting the recommendation of the Sentencing Commission, the Committee majority rejected documented and analytically sound analysis in favor of an insulting paternalistic approach based on unsupported anecdotal evidence.

Just as beer and wine are two forms of the same drug (alcohol), crack cocaine and powder cocaine are two forms of the same drug. Despite this, there is a vast disparity in the federal sentences for crack cocaine and powder cocaine offenses. Based largely on media perceptions (and misperceptions) surrounding the death of University of Maryland basketball star Len Bias, as well as other unsupported anecdotal evidence, Congress singled out crack cocaine for much harsher penalties than powder cocaine in 1986 when it enacted the first set of federal laws for cocaine offenses. Because of its relative low cost, crack cocaine is the drug of choice for poor Americans, many of whom are African Americans living in our inner cities. Conversely, powder cocaine is much more expensive and tends to be used by more affluent white Americans. Thus, punishing crack cocaine offenses more harshly than powder cocaine offenses unjustly and disproportionately penalizes African Americans.

Under current law, defendants convicted of trafficking 50 grams of crack cocaine receives the same ten-year mandatory minimum penalty as defendants convicted of trafficking 5,000 grams of pow-

¹United States Sentencing Commission, *"Cocaine and Federal Sentencing Policy"* (1995). Three members of the Commission dissented from the majority recommendation that base penalties for crack and powder cocaine trafficking offenses be equalized with sentencing enhancements added to address aggravating factors often associated with crack trafficking. However, even these three dissenting voices agreed that the current 100-to-1 disparity was unjust and should be reduced.

der cocaine. See 21 U.S.C.A. Sec. 841, 960. Conviction for trafficking a mere 5 grams of crack cocaine carries the same five-year mandatory minimum sentence as a conviction for trafficking 500 grams of powder cocaine. *Id.* For simple possession of more than 5 grams of crack cocaine, a defendant must be sentenced to a minimum of five years in federal prison while simple possession of any quantity of any other substance—including powder cocaine—is a misdemeanor offense, punishable by a maximum of one year in prison. See 21 U.S.C.A. Sec. 844.

A cost per dose comparison puts this disparity in perspective. 500 grams of powder cocaine produces 2,500 to 5,000 doses with a street value of between \$32,500 and \$50,000. In contrast, 5 grams of cocaine produces 10 to 50 doses and has a street value of between \$225 and \$750. Thus, at the high end of the scale, a defendant convicted of trafficking \$750 worth of crack cocaine would receive the same mandatory minimum five-year sentence as a defendant who trafficked \$50,000 worth of powder cocaine.²

Prisons are literally filled with young African-American men and women serving mandatory minimums for crack cocaine trafficking and possession offenses. Currently, 61% of federal inmates are serving sentences for drug offenses. That figure is expected to reach 70% by the year 2,000.³ The average prison stay for drug offenders has increased from 23.1 months in 1985 to 68.7 months in 1993.⁴ Twenty-one per cent of the drug law violators are classified as “low level” security risks (e.g. no record of current or prior violence, no involvement in sophisticated criminal activity and no prior commitment).⁵ Elimination of these types of offenders alone could dramatically reduce federal prison population. Similarly, studies have shown that \$3.5 billion could be saved if the terms of already sentenced inmates were reduced to those that would have applied for powder offenses.

Dr. Arthur Curry testified before the Crime Subcommittee on June 29, 1995, about his 19 year old son Derrick, who had never been in trouble with the law before but is now serving a twenty year sentence for a non-violent first offense involving crack cocaine. Judge Lyle Strom, the Reagan appointed Chief Judge of the U.S. District Court in Nebraska, similarly testified at the hearing about the unjust and discriminatory sentences he is forced to mete out against young African Americans convicted of relatively minor crack offenses. Last year, Chief Judge Strom became the first federal judge to refuse to impose a mandatory minimum sentence in a crack case. In supporting this decision, he asserted that since crack cocaine “is only minutes away from” powder cocaine, the disparity in sentences for the two forms of the same drug cannot be justified, particularly when the disparity has such an obvious disproportionate impact upon African Americans. In all, ten witnesses testified on June 29. When polled by Chairman McCollum, eight of

²United States Sentencing Commission. “*Cocaine and Federal Sentencing Policy*” 173 (table 19) (citing United States Drug Enforcement Administration, “*Illegal Price and Purity Report, United States: January 1990–December 1993*” (1994); United States Drug Enforcement Administration, “*U.S. Drug Threat Assessment: 1993*” (1993)).

³Statement of Kathleen M. Hawk, Director of Bureau of Prisons, Oversight Hearing on Matters Relating to Federal Prisons (June 8, 1995).

⁴*Id.*

⁵*Id.*

the ten—including Assistant Attorney General Jo-Ann Harris—agreed that the current 100-to-1 disparity in sentences for trafficking offenses could not be justified and that mandatory sentences for simple possession offenses should be eliminated.

One of the most prominent concerns expressed about crack cocaine focuses on the violence associated with its emergence. However, violence is by no means uniquely associated with crack cocaine. The image of the crack-crazed addict wildly and randomly shooting whoever crosses his or her path is often presented to justify heightened penalties for crack offenses. However, this type of drug-induced violence rarely occurs. Indeed, the drug which fits this image most appropriately is alcohol. Alcohol has been associated with more violent behavior than any other drug.⁶ The image of the desperate crack cocaine addict committing series of violent crimes to support his or her drug habit is similarly misplaced. Most of the habit supporting crime associated with crack is petty property theft, prostitution and crack cocaine dealing itself.

Market place violence accounts for the majority of crime associated with crack cocaine. Crack cocaine has created an underground economy in the inner city and in these economies, violence is used to achieve economic regulation and control. Such systemic, market place violence is present in the market place for all illicit drugs.⁷ The gangland murders of the 20's and 30's were directly related to alcohol's underground economy. In the late 70's and early 80's, turf wars between Colombian and Cuban drug kingpins over powder cocaine made Miami the murder capital of the world. In fact, the national homicide rates during the earlier powder cocaine war exceeded current national homicide rates associated with crack cocaine. In 1980, the national homicide rate was 10.2 per 100,000.⁸ The highest homicide rate since crack's introduction was 9.8 per 100,000, which occurred in 1991.⁹ The enormous amount of violence associated with the powder cocaine market even invaded popular culture through hit television series like "Miami Vice" and movies like "Scarface." In light of these historical facts, punishing crack cocaine more harshly powder cocaine is even more indefensible.

Although it is true that nothing in the truncated legislative history of the federal cocaine laws suggests the existence of a racially discriminatory intent in differentiating between sentences for crack and powder cocaine, the discriminatory impact of these laws cannot be ignored. African Americans accounted for 88.3% of federal crack

⁶United States Sentencing Commission, "Cocaine and Federal Sentencing Policy" 56, n. 105 (citing M. de la Rosa, "Introduction: Exploring the Substance Abuse-Violence Connection," in M. de la Rosa, B. Gropper, and E. Lambert (eds.), "Drugs and Violence: Causes, Correlates and Consequences" 5 (1990); n. 109 (citing A. Roberts, "Psychosocial Characteristics of Batterers: A Study of 234 Men Charged with Domestic Violence Offenses," 2 *Journal of Family Violence* 81, 82 (1987); n. 110; 99 n. 36 (citing P. Goldstein, "Drugs and Violence Crime," in "Pathways to Criminal Violence" 16, 24 (Neil A. Weiner et al., eds. 1989)).

⁷United States Sentencing Commission, "Cocaine and Federal Sentencing Policy," 64 n. 3 (citing Bruce D. Johnson & Ali Manwar, "Towards a Paradigm of Drug Eras" 7-8 (paper presented at American Society of Criminology, San Francisco, California) (Nov. 21, 1991); 97 n. 28 (citing J. Inciardi, "The Crack-Violence Connection Within a Population of Hardcore Adolescent Offenders," in M. de la Rosa, B. Gropper, and E. Lambert (eds.), "Drugs and Violence: Causes, Correlates and Consequences" 92 (1990); 108 nn. 90-91 (citing J. Inciardi and A. Pottieger, "Crack-Cocaine Use and Street Crime," *Journal of Drug Issues* (forthcoming 1994) (on file with University of Delaware Center of Drug and Alcohol Studies)).

⁸"Crime in the United States," Federal Bureau of Investigation, 1965-93.

⁹Id.

cocaine trafficking convictions in 1993, Hispanics 7.1%, Whites 4.1% and others 0.5%.¹⁰ Congressman Schiff suggested that the basis for this discriminatory impact has little to do with the law as written but instead reflects targeted enforcement of the law in African American communities. While such an analysis has some merit, it cannot overcome the fact that treating the form of cocaine used more commonly by poor, African Americans differently from the form of cocaine used more commonly by affluent, white Americans makes the current federal sentencing scheme discriminatory on its face.

According to the Sentencing Commission:

“Federal sentencing data leads us to the inescapable conclusion that Blacks comprise the largest percentage of those affected by the penalties associated with crack cocaine. This does not mean, however, that the penalties are racially motivated * * *. Nevertheless, the high percentage of Blacks convicted of crack cocaine offenses is a matter of great concern to the Sentencing Commission.”¹¹

The Commission went on to state:

“When one form of drug can be rather easily converted to another form of the same drug and when that second form is punished at a quantity ratio 100 times greater than the original form, it would appear reasonable to require the existence of sufficient policy bases to support such a sentencing scheme. * * * [especially] when such an enhanced ratio for a particular form of a drug has a disproportionate effect on one segment of the population * * *.”¹²

No analysis is the racially discriminatory impact of the current federal sentencing scheme is complete without discussion of the laws’ targeted enforcement by federal law enforcement. According to a recent Los Angeles Times article, the U.S. Attorney’s office in Los Angeles openly admits to targeting its resources towards minority communities. In an interview, Los Angeles U.S. Attorney Nora Manella acknowledged that federal agents have focused their resources in minority communities, where the crack trade is believed to be the most prevalent and violent.¹³ As a result of this acknowledged targeting of minority communities in the Los Angeles area, not a single white has been convicted of a crack cocaine offense in federal courts serving Los Angeles and its six surrounding counties since Congress enacted its mandatory sentences for crack dealers in 1986.¹⁴ Instead, virtually all white offenders are prosecuted in state court, where sentences are far less, with differences of up to eight years for the same offense.

¹⁰United States Sentencing Commission, “Cocaine and Federal Sentencing” Policy (1995).

¹¹*Id.*

¹²*Id.*

¹³Dan Weikel, “War on Crack Targets Minorities Over Whites,” Los Angeles Times, part A, p. 1. (May 21, 1995).

¹⁴Richard Berk, “Preliminary Data on Race and Crack Charging Practices in Los Angeles”, 6 Federal Sentencing Reporter 36-37 (1993) (memo written by Richard Berk and Alec Campbell re: *United States v. Jenkins*, No. 91-632-TJH in the Central District of California suggesting that federal crack prosecutions in Los Angeles have a racial distribution different from the racial distribution for arrest).

Comparison of the following two cases offers a striking example of this disparity. Stephen Green, a 20 year old, African American, first-offender, was arrested with 70 grams of crack by a federal undercover agent. He was sentenced in federal court to a 10 year prison term. Daniel Siemianowski, a 37 year old, white first offender, was arrested with 67 grams of crack by a county sheriff. He was sentenced in state court to less than a year in jail and probation.¹⁵ Similar discriminatory patterns exist outside of Los Angeles. A 1992 Commission survey shows that only minorities were prosecuted for crack offenses in more than half the federal court districts handling crack cases. No white were federally prosecuted in 17 states and many cities, including Boston, Denver, Chicago, Miami, Dallas and Los Angeles. Out of hundreds of cases, only one white was convicted in California, two in Texas, three in New York and two in Pennsylvania.

The significance of this targeted enforcement strategy is not that it explains the disparate impact current law has on the African American community, but that the existence of such a facially flawed sentencing scheme undermines the credibility of our entire system of federal laws and might invite discriminatory behavior by federal law enforcement personnel. In an era when blatant bias against African Americans within law enforcement agencies is coming increasingly into the open—from the despicable statements of former Los Angeles police detective Mark Fuhrman, through the disgusting behavior of Philadelphia police officers who admit to framing African American suspects—it is incumbent upon each of us, as the drafters of the laws for this great nation, to insure that no law remains on the books that calls into question the integrity of our system of justice. For this reason, we must dissent from the views of the majority on H.R. 2259 as it relates to sentences for crack cocaine offenses.

B. MONEY LAUNDERING

The proposed money laundering amendments disapproved by this bill are the result of a three-year effort by the Sentencing Commission. Without holding any hearings on this issue, the Congress is willing to substitute its judgment for the judgment of the Sentencing Commission despite the fact that the proposed amendments directly result from the Commission's ongoing guideline review and revision process—a process that Congress specifically directed the Commission to undertake. As a result, one of the fundamental goals of the Sentencing Reform Act—avoiding unwarranted sentencing disparity for similar offense conduct—has not been achieved to the extent it should in this area.

When the Commission first promulgated money laundering sentencing guidelines in April 1987, the statutes establishing money laundering offenses had been in effect for less than 6 months. Accordingly, no actual case experience existed to guide the Commission's formulation of the initial money laundering guidelines. Of particular importance, key elements of these offenses such as the requirement that a financial transaction qualify as "promoting"

¹⁵ Dan Weikel, "War on Crack Targets Minorities Over Whites," Los Angeles Times, part A, p. 1. (May 21, 1995).

criminal conduct—had never been judicially interpreted. The Commission therefore had to base guideline penalties for money laundering largely on (1) understanding of the kind of relatively serious cases that appeared to most concern Congress when it enacted money laundering statutes, and (2) representations by the Justice Department about the kind of money laundering cases that it expected to prosecute. Based on these understandings, the Commission set relatively high “base offense levels” (floors) for offenses covered by money laundering statutes. In fact, the Commission set the base levels higher than the base levels for other relatively serious offenses such as robbery, extortion, and aggravated assault. Under the guidelines, the least serious case in which money laundering is charged is sentenced at a relatively high level.

Over time, judges, probation officers and attorneys all began to criticize the guidelines. Eventually, this led the Commission to investigate and issue a report. The report noted that the typical money laundering defendant is not a specialized money launderer for some criminal enterprise such as a drug cartel or the mafia, but rather someone who conducted a financial transaction in connection with his own underlying offense—he spent, deposited or withdrew the stolen money. There is often no evidence that these transactions are made with the effort to conceal the illegal source of the funds or to promote additional criminal conduct.

In addition, the inherent rigidity of the money laundering guidelines has been used by prosecutors to allow drug trafficking defendants to “plead down” to a money laundering charge carrying a lower sentence than would have applied had the prosecutor also charged drug trafficking. The Commission found that in 70% of the cases in which the defendant had engaged in both drug trafficking and money laundering, the resulting sentence was lower than it would have been if drug trafficking had also been charged.¹⁶

The Sentencing Commission’s proposed amendments solve these problems by tying the guideline penalties more closely to the seriousness of the underlying crime from which the laundered funds were derived. Then, if the offense behavior actually involves more serious forms of money laundering, such as efforts to conceal or promote the underlying criminal conduct, substantially enhanced penalties will apply. In fact, the proposed amendments actually increase penalties for more serious money laundering offenses.

On the other hand, if an offense charged under the very broad money laundering statutes only involves an effort to deposit or spend the illegal proceeds of crime, with no effort at concealment or promotion, the revised guidelines will call for somewhat less stringent penalties, more in line with the seriousness of the underlying offense. Therefore, these amendments embody an approach that every Commissioner, past and present, who has had the opportunity to study the issue has come to regard as highly preferable.¹⁷ The more proportional money laundering sentencing guidelines will be more effective and better serve our criminal justice system in the long run.

¹⁶Letter from Sentencing Commission Richard Conaboy to Judiciary Committee Chairman Henry J. Hyde (August 11, 1995).

¹⁷*Id.*

Contrary to Department of Justice assertions, the Sentencing Commission's proposal would not substantially lower penalties for serious money laundering offenses. It is also untrue, as the Justice Department has suggested, that these amendments are the result of "intense lobbying by the white-collar defense bar." Rather, the Sentencing Commission's amendments provide that the enhancement in sentencing for money laundering will be tied to the underlying offense.¹⁸ Where up to now less serious money laundering offenses have been subject to a prosecutor's discretion to charge or not charge money laundering, often leading to vast and disproportionately increased sentences, the Commission's amendments provide that offenders will be punished in a manner more commensurate with the actual seriousness of the offense.

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¹⁸Id.