

110TH CONGRESS  
2D SESSION

# H. R. 5035

To amend the Controlled Substances Act and the Controlled Substances Import and Export Act to eliminate increased penalties for cocaine offenses where the cocaine involved is cocaine base, to eliminate minimum mandatory penalties for offenses involving cocaine, to use the resulting savings to provide drug treatment and diversion programs for cocaine users, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 17, 2008

Mr. SCOTT of Virginia (for himself, Mr. CONYERS, Mr. NADLER, Ms. ZOE LOFGREN of California, Ms. JACKSON-LEE of Texas, Ms. WATERS, Mr. COHEN, Mr. JOHNSON of Georgia, Mr. GUTIERREZ, Mr. ELLISON, Ms. CORRINE BROWN of Florida, Mr. DAVIS of Illinois, Mr. FILNER, Mr. GRIJALVA, Mr. LEWIS of Georgia, Ms. NORTON, Mr. PAYNE, Mr. RANGEL, and Mr. STARK) 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 amend the Controlled Substances Act and the Controlled Substances Import and Export Act to eliminate increased penalties for cocaine offenses where the cocaine involved is cocaine base, to eliminate minimum mandatory penalties for offenses involving cocaine, to use the resulting savings to provide drug treatment and diversion programs for cocaine users, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Fairness in Cocaine  
5 Sentencing Act of 2008”.

6 **SEC. 2. ELIMINATION OF INCREASED PENALTIES FOR CO-**  
7 **CAINE OFFENSES WHERE THE COCAINE IN-**  
8 **VOLVED IS COCAINE BASE.**

9        (a) CONTROLLED SUBSTANCES ACT.—The following  
10 provisions of the Controlled Substances Act (21 U.S.C.  
11 801 et seq.) are repealed:

12            (1) Clause (iii) of section 401(b)(1)(A).

13            (2) Clause (iii) of section 401(b)(1)(B).

14            (3) The sentence beginning “Notwithstanding  
15 the preceding sentence” in section 404(a).

16        (b) CONTROLLED SUBSTANCES IMPORT AND EXPORT  
17 ACT.—The following provisions of the Controlled Sub-  
18 stances Import and Export Act (21 U.S.C. 951 et seq.)  
19 are repealed:

20            (1) Subparagraph (C) of section 1010(b)(1).

21            (2) Subparagraph (C) of section 1010(b)(2).

1 **SEC. 3. REESTABLISHMENT OF POSSIBILITY OF PROBA-**  
2 **TIONARY SENTENCE.**

3 (a) CONTROLLED SUBSTANCES ACT.—Section  
4 401(b) of the Controlled Substances Act (21 U.S.C.  
5 841(b)(1)) is amended—

6 (1) in the penultimate sentence of subpara-  
7 graph (A), by inserting “, other than under clause  
8 (ii)” after “any person sentenced under this sub-  
9 paragraph”; and

10 (2) in the final sentence of subparagraph (B),  
11 by inserting “, other than under clause (ii)” after  
12 “any person sentenced under this subparagraph”.

13 (b) CONTROLLED SUBSTANCES IMPORT AND EXPORT  
14 ACT.—Section 1010(b) of the Controlled Substances Im-  
15 port and Export Act (21 U.S.C. 960(b)) is amended in  
16 the penultimate sentence of each of paragraphs (1) and  
17 (2), by inserting “, other than under subparagraph (B)”  
18 after “any person sentenced under this paragraph”.

19 **SEC. 4. ELIMINATION OF MINIMUM MANDATORY IMPRISON-**  
20 **MENT PENALTIES FOR COCAINE OFFENSES.**

21 (a) CONTROLLED SUBSTANCES ACT.—

22 (1) Section 401(b)(1)(A) of the Controlled Sub-  
23 stances Act (21 U.S.C. 841(b)(1)(A)) is amended by  
24 adding at the end the following: “However, any min-  
25 imum term of imprisonment otherwise required

1 under this subparagraph shall not apply to an of-  
2 fense under clause (ii).”.

3 (2) Section 401(b)(1)(B) of the Controlled Sub-  
4 stances Act (21 U.S.C. 841(b)(1)(B)) is amended by  
5 adding at the end the following: “However, any min-  
6 imum term of imprisonment otherwise required  
7 under this subparagraph shall not apply to an of-  
8 fense under clause (ii).”.

9 (b) CONTROLLED SUBSTANCES IMPORT AND EXPORT  
10 ACT.—

11 (1) Section 1010(b)(1) of the Controlled Sub-  
12 stances Import and Export Act (21 U.S.C.  
13 960(b)(1)) is amended by adding at the end the fol-  
14 lowing: “However, any minimum term of imprison-  
15 ment otherwise required under this paragraph shall  
16 not apply to an offense under subparagraph (B).”.

17 (2) Section 1010(b)(2) of the Controlled Sub-  
18 stances Import and Export Act (21 U.S.C.  
19 960(b)(2)) is amended by adding at the end the fol-  
20 lowing: “However, any minimum term of imprison-  
21 ment otherwise required under this paragraph shall  
22 not apply to an offense under subparagraph (B).”.

1 **SEC. 5. AUTHORIZATION FOR FEDERAL DRUG COURT PRO-**  
2 **GRAM.**

3 There is authorized to be appropriated to the Admin-  
4 istrative Office of the United States Courts \$10,000,000  
5 for each of fiscal years 2009 through 2013 to provide pre-  
6 trial diversion and post conviction drug courts at the Fed-  
7 eral level for people charged with illegal use of controlled  
8 substances.

9 **SEC. 6. REAUTHORIZATION OF DRUG COURTS GRANT PRO-**  
10 **GRAM.**

11 Section 1001(a)(25)(A) of the Omnibus Crime Con-  
12 trol and Safe Streets Act of 1968 (42 U.S.C.  
13 3793(a)(25)(A)) is amended to read as follows:

14 “(A) Except as provided in subparagraph (C),  
15 there are authorized to be appropriated to carry out  
16 part EE \$50,000,000 for each of the fiscal years  
17 2009 through 2013.”.

○