

August 26, 2014

The Honorable Jerry Brown  
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<b>Re: SB 1010 (Mitchell)</b> <b>Position: Support</b>
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Dear Governor Brown:

We write in strong support of **Senate Bill 1010**, legislation that equalizes quantity triggers for certain cocaine base and cocaine powder offenses. The measure would provide a fair approach and correct an imbalance in California's sentencing laws.

Harsh drug penalties are a contributing factor to high rates of incarceration and overcrowding in state prison facilities. Policymakers in the 1980s sought to control drug use by adopting sentencing enhancements and a tough on crime approach. While several bills introduced in the California Assembly would have provided assistance to counties to operate drug treatment facilities, the prevailing sentiment among elected officials was that drug users needed to be punished rather than helped.<sup>1</sup>

The Department of Corrections and Rehabilitation, reports that about 1,000 people are in California's prisons for possession for sale of crack cocaine; 98% of people entering a California prison for this offense are people of color. From 2005 to 2010, blacks accounted for 77.4% of state prison commitments for possession for sale of crack cocaine (but only 6.6% of the state population), Latinos accounted for 18.1%, "other" for 2.7%, and whites for 1.8%.

**SB 1010** includes several important provisions:

- **Sentencing:** Under current law, anyone convicted of possessing cocaine base for sale is sentenced to imprisonment for a period of 3, 4, or 5 years; anyone convicted of possessing for sale cocaine powder is punished by imprisonment for a period of 2, 3, or 4 years. A prior strike requires doubling these sentences. **SB 1010** would provide that anyone who possesses for sale either cocaine base or cocaine powder shall be punished by imprisonment for 2, 3, or 4 years. There would be no change to strike provisions.
- **Probation:** Existing law eliminates probation as a sentencing option when defendants are convicted of possession for sale for certain cocaine powder or cocaine base offenses. The quantity triggers that exclude this sentence are 28.5 grams or more for cocaine powder and 14.25 grams or more for cocaine base. Additionally, current law excludes probation as a sentence for certain transportation for sale cocaine offenses. Specifically, when the quantity triggers are 28.5 grams for cocaine powder and any amount for cocaine base.

**SB 1010** revises quantity triggers for probation as a sentencing option; under the bill generally probation will not be granted for any person convicted of possessing for sale or selling a substance containing 28.5 grams or more of cocaine powder or cocaine base, or 57 grams or more of a substance containing cocaine powder or cocaine base.

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<sup>1</sup> Maugh H Thomas, "Few Beds for Indigent Addicts" *Los Angeles Times* July 6, 1986: 35. ProQuest Historical Newspapers Los Angeles Times (1881-1987)

- Asset Forfeiture: Current law authorizes that the interest of any registered owner of a boat, airplane, or any vehicle used as an instrument to facilitate the manufacture of, or possession for sale, or sale of, 14.25 grams or more of cocaine base or 28.5 grams or more of cocaine powder is subject to forfeiture. **SB 1010** equalizes the asset forfeiture guidelines at 28.5 grams for either cocaine powder or cocaine base.

Fiscal pressure to tighten California's corrections budgets, along with mounting evidence documenting the unfair and unwarranted structure of these sentencing laws, suggests that lawmakers should reexamine the sentencing differential between crack and powder cocaine. California incarcerated more than 134,000 prisoners in 2012; taxpayers spend more than \$47,000 to incarcerate each prisoner. The nonpartisan Legislative Analyst's Office estimates that, by equalizing the penalty, state and local governments would save millions of dollars annually.

Senate Bill 1010 is a measured approach that would result in more effective and fair sentencing policy. In recent years, five states – Iowa, Connecticut, Missouri, Ohio, and South Carolina – have moved to modify their sentencing disparities between crack and powder cocaine.

- Connecticut equalized penalties for crack and powder in 2005. Prior to reform the state distinguished between crack and powder at a quantity ratio of 56.7-to-1.<sup>2</sup>
- Iowa modified the state sentencing disparity in 2003 from 100-to-1 to 10-to-1.<sup>3</sup>
- Missouri lawmakers reduced the highest disparity in the nation through legislation in 2012. The measure minimized the sentencing quantity ratio of 75-to-1 to 18-to-1, mirroring changes in the 2010 federal Fair Sentencing Act.<sup>4</sup>
- Ohio eliminated the distinction between criminal penalties for drug offenses involving crack and powder cocaine during 2011.<sup>5</sup>
- South Carolina equalized penalties for cocaine offenses in two stages, in 2005 and 2010 by eliminating distinctions between the two forms of cocaine in the criminal code.<sup>6</sup>

We urge your signing of **Senate Bill 1010**; it will improve California's sentencing policy. Low-level drug offenses that result in long prison sentences produce expensive policy outcomes. Modifying quantity amounts that trigger sentences for low level drug offenses will ensure that California's sentencing policy is both effective and fair.

Respectfully submitted,

AdvoCare, Inc.: Focused on Smart on Crime Solutions  
 African American Ministers in Action  
 African American Ministers Leadership Council (People for the American Way)  
 Center for Media Justice  
 Committed Caring Faith Communities  
 Crossroad Bible Institute  
 Ella Baker Center

<sup>2</sup> Connecticut General Statutes Annotated § 21a-278(a)

<sup>3</sup> Iowa Code § 124.401

<sup>4</sup> Missouri Annotated Statutes § 195.222

<sup>5</sup> Ohio Revised Code 2925.03

<sup>6</sup> South Carolina. Sentencing Reform Commission. Bullet Summary of S. 1154, as enacted. Columbia: LPITS, 2010.

Accessed online August 19, 2010:

<http://www.scstatehouse.gov/citizensinterestpage/SentencingReformCommission/SentencingReform.html>

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