

Durbin, Grassley, Booker, Lee, Introduce Legislation to Clarify Retroactivity Of Crack Cocaine Sentencing Reform

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Legislation comes on the heels of SCOTUS decision in Terry v. United States; clarifies that retroactivity is available to all offenders who were sentenced for a crack cocaine offense before the Fair Sentencing Act

WASHINGTON – U.S. Senate Majority Whip Dick Durbin (D-IL), Chair of the Senate Judiciary Committee; U.S. Senator Chuck Grassley (R-IA), Ranking Member of the Senate Judiciary Committee; and U.S. Senators Cory Booker (D-NJ) and Mike Lee (R-

UT), both members of the Senate Judiciary Committee; introduced the bipartisan *Terry Technical Correction Act*, which clarifies that all offenders who were sentenced for a crack cocaine offense before the *Fair Sentencing Act of 2010* can apply for its retroactive application under Section 404 of the *First Step Act*, including individuals convicted of the lowest level crack offenses. Section 404 of the *First Step Act* allows crack cocaine offenders to request a sentence reduction pursuant to the *Fair Sentencing Act*. The *Fair Sentencing Act*, authored by Durbin, reduced the federal sentencing disparity between crack and powder cocaine from 100:1 to 18:1. In 2018, Durbin, Grassley, Booker, and Lee were the lead sponsors of the *First Step Act*, which made the *Fair Sentencing Act* retroactive.

Earlier this year in *Terry v. United States*, 141 S. Ct. 1858 (2021), the Supreme Court held that low-level crack offenders, whose conduct did not trigger a mandatory minimum penalty, do not qualify for resentencing under Section 404 of the *First Step Act*. The effect of this holding is that individuals convicted of the offenses with the lowest levels of crack cocaine are not eligible for retroactive relief, whereas other offenders are. Durbin, Grassley, Booker, and Lee submitted an [Amicus Brief](#) in the case earlier this year.

“In the aftermath of *Terry v. United States*, it is up to Congress to clarify that the retroactivity provision of Section 404 of the *First Step Act* is available to all offenders who were sentenced for a crack cocaine offense before the *Fair Sentencing Act*—which was our intent when we wrote the legislation. It makes no sense to subject individuals who have committed the lowest-level offenses to harsh sentences that Congress has determined are unfair,” said Durbin. “I hope our colleagues on both sides of the aisle will join us in supporting this important bipartisan legislation.”

“In 2010, the Fair Sentencing Act established more just and reasonable punishments for federal crack offenses. When we wrote the First Step Act years later, we wanted to allow those sentenced under the previous harsher guidelines an opportunity to get their sentence reduced and brought into line with the newer, fairer guidelines. Our intent was clear, but apparently the text of the law was not. This straightforward, bipartisan bill will fix that problem,” Grassley said.

“Earlier this year the Supreme Court held that individuals convicted of the lowest-level crack-cocaine offenses are ineligible for a sentence reduction under the First Step Act,” said Booker. “I am proud to cosponsor this legislation to realize the First Step Act’s intent: all individuals convicted of crack-cocaine offenses, including at the lowest level, can seek resentencing under this law. This bill is critical to ensuring that the full scope of the criminal justice reform efforts envisioned in the legislation are achieved, and I urge my colleagues to support this bipartisan effort.”

“The First Step Act made significant strides to provide fairer sentencing for crack cocaine offenders,” said Lee. “This bipartisan bill is a straightforward fix to allow offenders access to those fairer sentencing guidelines.”

U.S. Senators Rand Paul (R-KY) and Amy Klobuchar (D-MN) are also cosponsors of today’s legislation.

U.S. Representatives Sheila Jackson Lee (D-TX-18) and Burgess Owens (R-UT-04) are leading the bipartisan companion in the House of Representatives. They are joined by Reps. Jerrold Nadler (D-NY-10), Thomas Massie (R-KY-04), and David Cicilline (D-RI-01).

“The *Terry Technical Correction Act* reaffirms Congress’s intent to provide retroactive sentencing relief to all individuals convicted of crack cocaine offenses before the *Fair Sentencing Act of 2010* took effect,” said Rep. Jackson Lee. “As the Supreme Court noted in *Terry*, I have worked to address the sentencing disparity between crack cocaine and powder cocaine offenses since 2007. Today, I am proud to introduce bipartisan legislation that is one more step in our efforts to correct a disparity that has damaged communities of color for generations and stolen years from thousands of individuals and their families. I thank Representatives Nadler, Cicilline, Owens, and Massie as well as Senators Durbin, Grassley, Booker, Lee, Paul, and Klobuchar for their leadership on this important issue.”

“The *Terry Technical Correction Act* is a common-sense solution clarifying the potential sentencing reductions to low-level crack offenses in the *First Step Act*,” said Rep. Owens. “I’m proud to support this legislation and its efforts to reduce the rate of recidivism in Utah and across the country.”

The *Terry Technical Correction Act* is supported by the following organizations: American Civil Liberties Union, American Conservative Union, Americans for Prosperity, Dream Corps JUSTICE, Drug Policy Alliance, Due Process Institute, FAMM, Federal Public and Community Defenders, Justice Action Network, Justice Roundtable, Law Enforcement Leaders, The Leadership Conference on Civil and Human Rights, Major Cities Chiefs Association, National Association of Criminal Defense Lawyers, National District Attorneys Association, Niskanen Center, Prison Fellowship, R Street Institute, Right on Crime, and The Sentencing Project.