

November 23, 2021

ATTORNEY GENERAL RAOUL URGES SUPREME COURT NOT TO RESTRICT RESENTENCING RELIEF UNDER FIRST STEP ACT

Chicago — Attorney General Kwame Raoul, as part of a coalition of 17 attorneys general, today urged the Supreme Court not to restrict the resentencing relief that individuals serving harsh sentences can seek under the First Step Act.

Raoul and the coalition [filed an amicus](#) brief in *Concepcion v. United States*, a case concerning what information a court may consider when deciding whether to reduce a harsh sentence for a prior crack cocaine offense under the First Step Act. Specifically, the coalition argues that courts should be able to consider intervening changes made to the law since its enactment, as well as intervening changes in a defendant's factual circumstances, such as good behavior in prison or evidence of rehabilitation.

Raoul and the coalition point to a universal consensus that the former federal sentencing regime, which disproportionately punished crack cocaine offenders over powder cocaine offenders, was unjust and had a disproportionate impact on communities of color. The brief also explains how state-level sentencing reforms analogous to the First Step Act have improved public safety and saved billions of dollars. Raoul and the attorneys general further contend that limiting the scope of the First Step Act would deprive both states and the federal government of similar benefits. Illinois made such reforms in 2013.

"Congress intended the First Step Act to correct prior injustices, improve public safety and save taxpayer money," Raoul said. "I urge the Supreme Court to allow the First Step Act to serve its intended purpose by ensuring that crack cocaine offenders have access to sentencing relief that considers all relevant changes in their factual and legal circumstances."

In the 1980s, states and the federal government responded to the prevalence of crack cocaine and public panic about its supposedly unique dangers with aggressive penalties and targeted criminalization. Federal sentencing laws treated crack cocaine much more harshly than powder cocaine, with 100 times as much powder cocaine as crack cocaine needed to trigger the same penalties. Harsh penalties for crack cocaine exacerbated racial inequality in the justice system.

In 2010, Congress passed the Fair Sentencing Act to reduce the disparity between sentences for crack cocaine and powder cocaine. The First Step Act, a bipartisan criminal justice reform bill passed in 2018, included a provision that made the Fair Sentencing Act's reforms retroactive, allowing those serving harsh sentences imposed under the former federal law to seek relief.

In today's brief, Raoul and the attorneys general urge the Supreme Court to reverse a lower court's decision dramatically limiting what courts may consider when resentencing otherwise eligible individuals under the First Step Act. The attorneys general argue that during First Step Act resentencings, courts should be allowed to consider intervening changes in the law and facts because:

- **There is consensus that applying dramatically harsher sentences for crack cocaine offenses over powder cocaine offenses was unnecessary and unjust.**
- **Sentencing reform has been shown to improve public safety and save tax dollars.** States have experimented with sentencing reforms and reduced sentences for drug-related offenses for decades and have seen these reforms improve public safety, strengthen communities, and decrease recidivism.

- **The First Step Act was intended to right historic wrongs.** Congress passed the First Step Act in part to correct fundamental injustices in federal cocaine sentencing laws and to address the severe racial disparities created by the prior sentencing regime. It would make little sense to require courts to limit the factors they consider in resentencing and apply old rules no longer on the books – including rules rejected by Congress, the courts, and the Sentencing Commission – when Congress passed the First Step Act specifically to correct the unjust and racially disparate sentences brought on by the old regime.

Joining Raoul in the brief are the attorneys general of Colorado, the District of Columbia, Guam, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Vermont, Virginia and Washington.