

Panel Trashes Sentence Ratio For Cocaine Proposals Would Drop Crack-Powder 100-to-1 Disparity

By Lawrence Hurley

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WASHINGTON - The U.S. Sentencing Commission on Tuesday urged Congress to make dramatic changes to sentencing guidelines for cocaine-related offenses.

This is the fourth time during the past 12 years that the commission has asked Congress to address the disparity between sentences for crack cocaine and powder cocaine.

Democrats More Amenable

Experts believe that a Democrat-controlled Congress might be more amenable to the proposals than was its Republican-controlled predecessor.

The commission's long-awaited 200-page report calls on Congress to rethink the way cocaine sentencing is calculated, largely by discarding a 21-year-old 100-to-1 disparity in the guidelines for crack and powder cocaine. The report suggests reducing sentences for crack-cocaine possession and increasing the quantity of crack needed to trigger longer trafficking sentences.

Guidelines Under Attack

Legislation establishing the sentencing ratio was enacted in 1986, in reaction to public outcry over an inner-city crack epidemic. Since then, the guidelines have come under attack from judges, lawmakers and attorneys.

In its new proposals, the commission dodges the ratio controversy by changing mandatory minimum sentences for crack and powder cocaine. Sentencing experts say the changes would reduce the disparity, which would range from 20-1 to 85-1 depending on the offense.

"They are intentionally breaking away from a ratio-based debate," said Douglas A. Berman, a professor at Ohio State University's Michael E. Moritz College of Law. "They are saying, 'Make this bad system less bad.'"

Perhaps most importantly, the commission suggests increasing the amount of crack cocaine required to trigger five- and 10-year mandatory minimum sentences. The commission is headed by Judge Ricardo H. Hinojosa of U.S. District Court for the Southern District of Texas.

The intent is to focus law enforcement on high-level dealers.

One criticism of the 100-to-1 ratio is that it encourages prosecutors to go after low-level drug dealers, rather than chase drug kingpins who are more difficult to convict. The law does not take into account the fact that high-level dealers handle only powder cocaine.

Powder cocaine usually is converted into crack by low-level operatives within drug organizations.

The commission also suggests repealing the mandatory minimum sentence for simple possession of crack cocaine, a five-year term if the amount is more than 5 grams. Under the proposed change, a person convicted of crack-cocaine possession would get the same sentence as someone convicted of possessing any other controlled substance: a maximum of one year in prison.

Finally, the commission urges Congress not to decrease the quantity of powder cocaine needed to trigger five- and 10-year sentences, a move touted by some as a way to reduce the disparity without reducing sentences.

The commission says it makes recommendations based on several findings, including one that current penalties "overstate the relative harmfulness of crack cocaine compared to powder cocaine."

Under current law, a defendant convicted of dealing 50 grams of crack cocaine receives the same sentence as someone convicted of trafficking 5,000 grams of powder cocaine.

The existing guidelines "sweep too broadly and apply most often to lower-level offenders," the report states.

Furthermore, "the current severity of crack-cocaine penalties mostly impacts minorities," the

commission noted.

Congress will consider whether to endorse the report's conclusions. Several major players including Rep. John Conyers, D-Mich., chairman of the House Judiciary Committee, are on the record supporting reform.

Sen. Patrick J. Leahy, D-Vt., chairman of the Senate Judiciary Committee, welcomed the report's findings Tuesday, describing them as "an important first step" in correcting the disparity.

"For far too long, the federal crack/powder sentencing laws have created an injustice in our nation," he said.

Leahy said he hopes that federal prosecutors will focus more on drug kingpins.

Former House Judiciary Committee lawyer Eric E. Sterling, who helped draft the original legislation but regrets doing so, said he had hoped the report would center more on the need for the federal government to focus on high-level cases.

"If I want to stop cocaine from going into crack houses in Los Angeles, the federal government has got to be involved at the international level," Sterling said, referring to the major drug cartels.

Street-level enforcement should be left to local prosecutors, he added.

The Justice Department historically has opposed making changes to the sentencing guidelines.

Justice Department spokesman Bryan Sierra said the agency is "willing to discuss the disparity in the ratio for sentencing between crack and powder cocaine," but he added that the department believes that "it should be done in the broader context of sentencing reform."

Even before Congress takes action, the report could have consequences in courts nationwide, according to Berman. He expects judges to take a close look at the report in light of a 2005 U.S. Supreme Court ruling that federal sentencing guidelines were not mandatory. *U.S. v. Booker*, 543 U.S. 220 (2005).

Some could use the report to justify below-guideline sentences in crack-cocaine cases, Berman added.

"This should have a profound effect on the courts," he said.

The Supreme Court is considering a crack-cocaine-sentencing case that some believe could be affected by the report's publication. In that case, trial judges have departed below the sentencing guidelines, citing *Booker* and criticizing mandatory minimum sentences. *U.S. v. Claiborne*, 06-5618.

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