

TomPaine.com common sense

Progressive insight and action. Every day.

A Project of the Institute for

Seeking Justice In The Drug War

Marc Mauer and Kara Gotsch

March 12, 2007

Marc Mauer is the executive director and Kara Gotsch is the director of advocacy of [The Sentencing Project](#) in Washington, D.C.

Twenty years ago fears about crack cocaine addiction and its associated violent trade plagued urban communities across the country. Newscasters used words like “crisis” and “epidemic”—later shown to be overblown—to describe the impact of crack. The political hysteria that ensued led Congress to pass the Anti-Drug Abuse Act of 1986. The law’s mandatory penalties for crack offenses were the harshest ever adopted for low-level drug offenses.

Two decades later, a new consciousness about the impact of the war on drugs, the costs of incarceration to urban communities and the effectiveness of drug treatment has emerged among public officials. At a time of political change in Washington and a renewed interest by the United States Sentencing Commission in addressing the issue, Congress may be on the verge of mending the crack injustice.

When Congress established drastically different penalty structures for crack and powder cocaine it did so believing that crack cocaine was more dangerous than powder cocaine and posed a greater threat to communities. The drugs are pharmacologically identical, however, with the primary difference between them being their production and means of consumption. Despite the similarities, defendants convicted with just five grams of crack cocaine, the weight of less than two sugar packets, are subject to a five-year mandatory minimum sentence under the law. The same five-year penalty is triggered for powder cocaine only when an offense involves 500 grams, 100 times the minimum quantity for crack.

Under mandatory sentencing, average sentences for crack cocaine offenses are three and a half years longer than for offenses involving powder cocaine. Sentences for crack cocaine are also two years longer than for methamphetamine and five years longer than for heroin.

The impact of the crack cocaine provisions has been troubling on two counts. First, they have created a significant racial disparity in prosecutions and confinement. Along with disproportionate law enforcement practices that target black communities, the crack sentencing policies have resulted in 80 percent of crack cocaine defendants being African American despite the fact that a majority of crack cocaine users in the U.S. are white or Hispanic. The crack penalties are the main cause of a 77 percent increase in the average federal prison time served by African Americans for a drug offense between 1994 and 2003, compared to an increase of 28 percent for white drug offenders.

Second, a serious misdirection of federal resources has emerged. The crack law fails as an effective

drug strategy by inappropriately targeting low-level offenders. While the federal courts are normally expected to focus on high-level drug operations, nearly three-quarters of federal crack cocaine defendants have only low-level involvement in drug activity, such as street-level dealers, couriers or lookouts. This pursuit of low-level offenders diverts resources away from the most troublesome contributors to the illegal drug market—drug kingpins and importers. As noted by the Sentencing Commission in its 1997 report to Congress, “[h]igh penalties for relatively small amounts of crack cocaine appear to be misdirecting federal law enforcement resources ...”

In November, the commission revisited the controversy regarding crack and powder sentencing at a public hearing where judges, medical professionals and criminal justice analysts all called for reducing the penalties for crack. This month the commission is seeking public comment regarding the sentencing law, and by May 1, the commission is likely to again ask Congress to fix the unfair sentencing disparity for offenses involving crack cocaine. It has urged Congress to do so three times since 1995, but previously met resistance from both Democratic and Republican administrations.

This year bipartisan interest in addressing crack sentences may finally spur Congress to enact policy reform. Most notably, Senator Jeff Sessions, R-Ala., introduced legislation last year to lessen the inequality in crack cocaine sentences. Although a step in the right direction, it does not go far enough. The proposal would raise the trigger amount for the five-year mandatory minimum to 20 grams from five grams, but lower the trigger threshold for powder cocaine, thus subjecting more cocaine defendants to a mandatory minimum sentence while still harshly punishing many low-level crack defendants. Senator Sessions, who is likely to reintroduce his legislation, is right to seek reform of the 20-year-old law, but harsh mandatory minimum penalties for drug offenses should not be applied to any low-level drug defendants. Since state law enforcement agencies can and do prosecute these drug offenses, federal encroachment in this area is unwarranted.

An alternative to Sessions' bill was introduced in January by Rep. Charles Rangel, D-N.Y. His legislation would equalize the penalties for powder and crack cocaine by raising the quantity of crack that triggers a five-year mandatory sentence to 500 grams. This approach would eliminate the unjustified disparity in sentences for crack and powder and reduce the number of low-level drug offenders sentenced to harsh mandatory minimum sentences. Such a proposal deserves serious consideration by Congress.

With champions for criminal justice reform like Rep. John Conyers, D-Mich., and Senator Patrick Leahy, D-Vt., heading the judiciary committees in Congress, the opportunity to redress the misguided crack sentencing policy is upon us. Hearings before both committees are long overdue in this arena and would provide the necessary evidence to dispel the misinformation and hysteria that clouded the public debate on crack cocaine in the past. These myths have done a disservice to developing responsible drug policy, while exacerbating the tragic racial disparities that plague our prison system. Now is the time for congressional attention and action.