The prospects for significant reform to the federal crack cocaine sentencing policies improved dramatically over the summer, when a bill that would equalize the penalties for powder and crack cocaine offenses passed out of the House Judiciary Committee. The reform bill, HR 3245, was introduced by Congressman Bobby Scott, Chairman of the Subcommittee on Crime, Terrorism, and Homeland Security.

Since this historic vote, advocates have been expecting Senate Judiciary Subcommittee Chairman Dick Durbin of Illinois to introduce a bipartisan bill in the Senate to reform the current penalties.

"After two decades of watching the devastating effects of the racially biased, excessive federal sentences for low-level crack cocaine offenses, we are beginning to see the light at the end of the tunnel," said Marc Mauer, executive director of The Sentencing Project.

Since before the start of the new Congress in January, momentum on crack cocaine sentencing reform has been escalating. Even before taking office in January, President Obama’s transition committee identified eliminating the “100 to 1” drug quantity disparity between crack and powder cocaine offenses as a top civil rights priority.

The disparity results from a penalty structure in which the amount of the drug involved in an offense triggers a five- or ten-year mandatory minimum prison sentence. Thus, an offense involving just 5 grams of crack cocaine results in the same five-year prison term as one involving 500 grams of powder cocaine. The disparity disproportionately affects people from low-income communities of color, because crack is more likely to be sold in open-air drug markets, as opposed to transactions for powder cocaine, which often take place behind closed doors, away from law enforcement.

Marc Mauer speaks with Congressman Danny Davis, at the “Rethinking Federal Sentencing Symposium” in June.

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Report finds first racial shift in drug war

In April, The Sentencing Project released a new report documenting that for the first time in the 25 years since the inception of the “war on drugs,” the number of African Americans incarcerated in state prisons for drug offenses declined. The report, The Changing Racial Dynamics of the War on Drugs found a 21% decline for the period 1999 to 2005.

The study also documented a corresponding 42% rise in the number of whites in state prison for a drug offense during the same period. The report received broad news coverage including in the Washington Post, New York Times, Christian Science Monitor and on CNN. Executive Director Marc Mauer was interviewed about the report on National Public Radio. Excerpts of the interview with Michel Martin, host of Tell Me More, are on page 2.
Changing face of the war on drugs

In April, Executive Director Marc Mauer was interviewed about the findings of The Sentencing Project’s report, The Changing Racial Dynamics of the War on Drugs on NPR’s Tell Me More with Michel Martin.

Until recently America’s war on drugs disproportionately affected African Americans and Latinos, but a new study finds that this trend might be changing. Marc Mauer is author of the study. He’s also Executive Director of The Sentencing Project.

What is driving these dramatic changes? It seems like we have been talking about these sentencing disparities for years, and it seems like a very dramatic change. What’s driving it?

Yes, a couple of things stand out. First, crime rates have generally been declining in recent years, so it’s possible that there’s less law enforcement presence in some of these low-income, African American communities. Secondly, the crack cocaine epidemic of the late 80’s and early 90’s had waned by the mid 90’s, and that’s true across all racial/ethnic groups. To the extent that the war on drugs was so heavily prioritized on going after black communities and crack cocaine, some of that may have dropped off as well.

We also see some positive changes. It’s conceivable that some people who previously might have gone to prison are now going to treatment and avoiding a prison term, so it’s probably a combination of things coming together.

Just to set some parameters here, the research suggests that African Americans represent about 12% of the drug using population, but make up about 45% of those who are in state prisons for drug related offenses. Has it always been that way, as long as The Sentencing Project has been tracking these numbers?

We’ve seen tremendous racial disparities, and probably more so when it comes to drug offenses, than any other type of offense. What we know about drug law enforcement is that it’s very discretionary. If you have a middle class community and parents have a kid who has a drug problem, they don’t call up the police and say, “Would you please arrest my kid?” They instead get their kid into the best treatment program they can find. They deal with it as a family problem, as a health problem. In low-income communities, communities of color, where those same resources may not be available, the problem is much more likely to be defined as a criminal justice problem. So then we address it with police and prosecutors and prisons.

But what would account then for this increase of white prisoners?

Some of this may be due to methamphetamine use and methamphetamine sentencing policy. At least in a handful of states in the upper Midwest – Iowa, Minnesota, Montana – we can track increasing numbers of people going to prison for meth offenses, and these people are disproportionately white or Latino, but rarely African American. This may not explain the whole national move, but at least it tells us that often this is very localized and probably related to meth in part.

You’ve talked about the role of the crack epidemic and it swelling the ranks of people in prisons. Is it your sense that this epidemic has waned, or has the law enforcement approach to it changed?

It’s a mixed picture. In some ways, the local law enforcement response may have changed. We may be seeing fewer arrests, or fewer arrests of African Americans, but if you look at the federal system, which we did in the report, we find that the numbers still continue to skyrocket. We find that the African American number of drug offenders increased by about a third, as did the white and Latino drug offenders. So, the overall state prison population for drug offenses more or less stabilized, while the federal prison population for drugs goes up by a third. Very dramatic contrast there.

Is there anything else you want to tell us about the federal prison population? The report is mainly focused on state prisons.

The critical issues in the federal system are primarily the sentencing policies. The mandatory sentencing policies, and especially involving crack cocaine. This has been the subject of much controversy since 1986 when these laws were adopted, providing for a mandatory five years in prison for possessing as little as five grams of crack cocaine, the weight of about

Changing face of the war on drugs continued on page 3
Two sugar packets. Two years ago, the U.S. Sentencing Commission adjusted its guidelines to reduce the crack sentences somewhat, but the critical issue is still the mandatory sentences that are driving these policies. There is now increasing momentum in Congress to reconsider, possibly to equalize the penalties between crack cocaine and powder.

There are those of course who would argue that the reason the crime rate has dropped as dramatically as it has over the years, is that a lot of these people are in prison.

We’ve seen the prison population go up for more than 35 years now, and during that time there have been periods when crime has gone up, and periods when crime has gone down. There’s no strong and consistent relationship.

And does prison have an impact on crime? Yes, it has some impact. If we have a serial rapist who is apprehended and sentenced to prison, that community is a little bit safer because he or she is behind bars. If we’re talking about low-level drug offenses though, the impact of prison is very different. When we send somebody away for a drug offense, somebody who has been selling drugs on the street corner, how long does it take until that person is replaced on that street corner? Well, it takes about 20 minutes in most neighborhoods. But, as we’ve seen in the war on drugs, we’ve now got a half million people in our prisons and jails for a drug offense. The deterrent effect certainly has not kicked in the way it was promised to.

We’ve talked about the role of methamphetamine that may or may not play in the prison system. We’ve talked about crack cocaine. What about marijuana, which I believe, is still the most widely used illegal drug?

Exactly. The strange thing is that we still have record numbers of drug arrests. Increasingly since about 1990 marijuana has made up a rising proportion of all drug offenses. More than 40% of all 1.8 million drug offenses each year are for marijuana, and most of those are for possession. In terms of how law enforcement and court resources are being used, we’re spending billions of dollars processing what most people would agree is the less severe type of drug case. One may think marijuana is a good drug or a bad drug, but no one would question that it’s less harmful than heroin, crack and cocaine.

You’ve made the argument that incarceration policies really don’t have much effect on crime. You think it has some effect on crime. We’re in difficult economic circumstances now. Some would argue that poverty, fear, economic anxiety drives the crime rate. Do you think that’s true?

It’s really a question of how we respond to the economic crisis. Through the government stimulus package, what kinds of jobs are going to be created? Are they going to be jobs that people coming out of prison may have access to, or could we do some training for them? Some people are talking about “green jobs,” which can be locally based, retrofitting homes, weatherization. These are the kinds of things that people who might otherwise end up in the justice system could be readily trained for. So, we can use this as an opportunity to try and reverse some of those long term trends, particularly in low-income communities.

Overall, there are those who would argue that it’s really time to stop putting so much emphasis on race. Is it still relevant?

You know, I studied this from a quantitative point of view, but every time I go into any courtroom or a prison system, I look around. You don’t need to be a sociologist to get this story. We’re talking about a sea of black and brown faces. And, communities who believe the system isn’t working for them are less likely to cooperate with law enforcement and with the courts, and then we don’t have a very effective justice system.

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In May, The Sentencing Project ramped up its activities in the states when Nicole D. Porter joined the staff as State Advocacy Coordinator. Porter formerly directed the ACLU’s Prison and Jail Accountability Project, which monitored conditions of confinement in Texas jails and prisons. She holds a master’s degree in public affairs from the LBJ School at the University of Texas.

“The vast majority of people incarcerated in the U.S. are in state prisons and local jails,” said Executive Director Marc Mauer. “The Sentencing Project has been active in the states for more than twenty years, but the addition of a staff member to focus on the states provides a new opportunity for The Sentencing Project to support state reforms.”

Porter will initially be working on disenfranchisement reform, racial disparities and reentry initiatives, assisting advocates in policy development, media outreach, and advocacy strategies to advance their efforts. One project that Porter has initiated is a new listserv for state advocates to use to share ideas and strategies for state-level reforms.

“Every state has its own distinctions, and each state legislature has its own traditions and nuances,” said Porter, “but advocates from different states can learn from each other in terms of strategy, outreach, messaging and public education.”

To join the State Advocates Listserv, or find out how The Sentencing Project may be able to assist your state or local organization, contact Nicole Porter at nporter@sentrinco.org.

Editorial Support for Crack Reform

National media have published editorials and op-ed columns in support of ending the sentencing disparity, including:

- Alaska Dispatch
- The Boston Globe
- Denver Post
- Huffington Post
- Miami Herald
- Minneapolis Star Tribune
- New York Times
- Philadelphia Inquirer
- The Republican
- State Journal Register
- Statesman-Journal
- Times Free Press

“Congress’ decision to mandate longer prison terms for people arrested with crack cocaine than those caught with the powdered form of the drug was both irrational and discriminatory.”

Fairness in Drug Sentencing
The New York Times
April 30, 2009

Crack equalization bill continued from page 1

In April, at a hearing in the Senate Judiciary Subcommittee on Crime and Drugs, Chairman Durbin offered a brief history of the current policy. “I was one of those who voted for this disparity. Crack … was viewed as a scourge. Today, on reflection, we realize that decision was wrong.”

Administration supports ending disparity

Just days after being confirmed as chief of the criminal division in the Department of Justice, Lanny A. Breuer testified at the hearing, and stated the administration’s support for completely eliminating the current sentencing disparity.

“We believe the structure is especially problematic because a growing number of citizens view it as fundamentally unfair. The administration believes Congress’s goal should be to completely eliminate the sentencing disparity between crack cocaine and powder cocaine.” Senator Orrin Hatch of Utah said he hopes Congress will address the disparity this year. “We need a better system where we can do something for these folks short of prison,” he said.

In May, the House Subcommittee on Crime, Terrorism and Homeland Security held a hearing on the sentencing disparity chaired by Congressman Scott. Marc Mauer was a witness for the hearing, as was Willie Mays Aikens, a former first baseman for the Kansas City Royals who developed a drug problem and was eventually sentenced to more than 20 years in prison for a crack offense. Aikens appeared at the hearing shortly after receiving a sentence reduction as a result of the amendment to the sentencing guidelines adopted by the U.S. Sentencing Commission in 2007. “I could have gotten probation for 64 grams of powder cocaine,” he testified, “and the most I would have gotten is two years in prison. The fact that it was crack cocaine added ten years to my sentence, which is totally wrong.”

In June, the Congressional Black Caucus held a symposium on the 25th anniversary of the Drug Reform Act, headlined by Supreme Court Justice Stephen Breyer, one of the architects of the Federal Sentencing Guidelines, and Attorney General Eric Holder. Both Justice Breyer and Mr. Holder specifically highlighted crack cocaine sentencing reform as a priority.

Justice Department to review sentencing

At the symposium, Holder also announced the creation of a Sentencing and Corrections Working Group chaired by the Deputy Attorney General. The group is charged with considering the structure of federal sentencing, including the role of mandatory minimums; Department of Justice charging and sentencing policies; alternatives to incarceration and re-entry; eliminating the sentencing disparity between crack and powder cocaine; and examining unwarranted disparities in federal sentencing.

ADVOCACY

Sentencing Project steps up state focus

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**Voting Rights**

**Federal voting rights act introduced**

The right to vote in federal elections for individuals with felony convictions moved one step closer to becoming reality in July, when the Democracy Restoration Act (DRA) was introduced. The Act, introduced by House Judiciary Committee Chairman John Conyers of Michigan, and in the Senate by Judiciary Subcommittee Chairman Russ Feingold of Wisconsin, would restore voting rights to millions of Americans with felony convictions.

An estimated 5.3 million citizens cannot vote due to felony convictions, and nearly 4 million of those are living and working in their communities while on probation or parole, or following completion of their sentence. The DRA would establish a uniform standard restoring voting rights in federal elections to anyone not incarcerated.

Since the August recess, The Sentencing Project has been educating Capitol Hill staff about the Act, and encouraging members of Congress to sign onto the bill. Contact your House and Senate representatives to voice your support for the Democracy Restoration Act today. Visit www.house.gov, or www.senate.gov, or call the Capitol switchboard at (202) 224-3121.

**New voters exercising rights in Rhode Island**

In 2006, Rhode Island voters approved a referendum restoring voting rights to individuals on probation or parole. The Family Life Center (FLC) played a leadership role in the campaign for the referendum, and received communications strategy and media training from The Sentencing Project through the national Right To Vote campaign.

Following the change in the law, the FLC initiated a campaign to inform the community of the reform and to register people with felony convictions. The FLC released the results of their campaign and analysis at a July event including The Sentencing Project’s Executive Director, Marc Mauer.

The study showed that of the 17,600 individuals who became eligible to vote after the law changed, more than one-third, or 6,330, registered to vote during the 2008 election cycle. Of these, 3,001 cast a vote in one or more of the three statewide elections.

The results in Rhode Island demonstrate that substantial numbers of people who have come through the criminal justice system are interested in being involved in the electoral process.

The Family Life Center has recently changed its name to OPENDOORS.

**Inter-American Commission petitioned to review U.S. disenfranchisement**

The Sentencing Project, with the Lawyers’ Committee for Civil Rights Under Law, American Civil Liberties Union and other allies, has submitted a petition for a hearing before the Inter-American Commission on Human Rights concerning the discriminatory effects of felony disenfranchisement policies in the Americas.

The Commission, part of the Organization of American States (OAS), includes 35 member states. Petitions from members highlighting issues of concern are accepted during the year. If a petition is accepted, the Commission solicits analyses and hears testimony from witnesses on specific policies, in order to determine whether any requirements of the OAS Charter, the American Declaration of the Rights and Duties of Man, and/or the American Convention on Human Rights have been violated.

Most countries in the Americas do not disenfranchise citizens after their sentences are completed, and no nation disenfranchises its citizens to the extent that the U.S. does. Fifteen countries in the Americas expressly forbid permanent disenfranchisement.

The petition includes an examination of felony disenfranchisement in the U.S. and the nations of the Americas, and analyzes their impact on racial and ethnic minorities. It describes the international momentum in support of reform, and calls upon the Commission to examine this practice among its member states. If the petition is accepted, the hearing will be held this fall.

The petition was joined by 31 national supporters, 36 state supporters, and 4 international supporters. Read the petition at www.sentencingproject.org.
Life sentences examined in new report

One group in the American prison system that receives little attention is the population of people serving life sentences, or “lifers.” In keeping with a long tradition of addressing difficult issues in criminal justice reform, in July, The Sentencing Project released a new examination of life sentences, No Exit: The Expanding Use of Life Sentences in America.

No Exit finds a record 140,610 individuals, or 1 of every 11 people in prison, now serving life sentences in state and federal prisons. In addition, 29% of those serving a life sentence (41,095) have no possibility of parole. There are 6,807 individuals serving life sentences who were juveniles at the time of the crime, and of those, 1,755 have no possibility of parole.

The growth in life sentences has been dramatic – from 1984 to 2008, the number of individuals serving a life sentence quadrupled. This increase is not primarily a result of higher crime rates, but of policy changes that have imposed harsher punishments and restricted parole consideration.

The principle of rehabilitation, once a cornerstone of American corrections, has been eroded with these policy changes. Although lifers have been convicted of some of the most serious crimes, research (including a 2004 analysis by The Sentencing Project) has shown that lifers have recidivism rates well below those of others in prison.

Racial disparity among lifers
No Exit is also the first nationwide collection of life sentence data documenting race, ethnicity and gender, and reveals overwhelming racial and ethnic disparities in the allocation of life sentences. Two-thirds of all persons sentenced to life are non-white, as are 77% of juveniles serving life sentences.

“Although many individuals serving life sentences present a threat to public safety, for some the sentence is questionable,” said Research Analyst Ashley Nellis, co-author of the report. One example profiled in the report is the case of Ali Foroutan. Mr. Foroutan is currently serving a sentence of 25 years to life for possession of 0.03 grams of methamphetamine under California’s “three strikes” law.

In the report, The Sentencing Project calls for the elimination of sentences of life without parole, and restoring discretion to parole boards to determine suitability for release. It also recommends that individuals serving parole-eligible life sentences be prepared for reentry back into the community.

No Exit received wide media coverage, including in the New York Times, USA Today, Philadelphia Inquirer, Miami Herald and the Dallas Morning News, as well as ABC and CBS News Radio, and CSPAN. No Exit: The Expanding use of Life Sentences in America can be downloaded at www.sentencingproject.org.

Quoting The Sentencing Project

May 28, 2009
“If you just want drug treatment, in some places you are better off getting arrested and going to drug court.”

-Marc Mauer, Executive Director, on the White House Office of National Drug Control Policy report finding that half of men arrested test positive for drugs

May 20, 2009
“For the Justice Department to come out and say in strong language that they want to eliminate the disparity is a remarkable development. There is much more momentum than we have ever seen on this.”

-Marc Mauer, Executive Director, on the momentum for reforming the disparity in crack vs. powder cocaine sentences

July 22, 2009
“If you look at every stage of the criminal justice system from initial police contact all the way through sentencing and incarceration, you see that African Americans are disproportionately impacted by each stage. What we ultimately see as disparate incarceration rates are contributed to by all of these factors.”

-Ryan King, Policy Analyst, on racial profiling in the United States
The Sentencing Project recently got a call from one of our friends and donors, Rachel Porter of Brooklyn, New York. Rachel called to let us know that she and her husband, Manlio Narici, have made a bequest to The Sentencing Project in their will.

You seem a bit young to be thinking about your legacy. What prompted you and your husband to start making out your will?

I recently gave birth to my son Sasha, and now my husband and I have two small kids. Accidents and other sad things happen, so it would be kind of irresponsible not to have a will.

What motivated you to make a bequest to The Sentencing Project in your will?

I believe in living with the greatest happiness and greatest integrity possible. So that includes how I will distribute my possessions when I’m no longer here. I believe in collective responsibility and part of that is giving money. I try to give away about 3% of my pre-tax income to organizations I believe in and I aimed to do the same in my will. Probably I did not quite make it to 3%, but I have two little kids, so I guess I erred on the side of leaving more to them.

What is it that you appreciate most about The Sentencing Project’s work, and why do you think it’s important to support the organization?

I think that the way we deal with crime in our society is seriously flawed. I see it as really a moral issue. I do not accept that people can commit crimes without punishment, but I believe we are woefully unsophisticated in thinking about the causes and impact of crime. Consequently we tend to be knee-jerk and overly harsh when it comes to punishment. As a criminal justice researcher, I have spent time in prisons and courts and I find both troubling in the lack of humanity with which they operate. The Sentencing Project is one of a handful of rigorous and committed organizations I see trying to rectify how our country deals with punishment.

How did you get interested in criminal justice?

I studied religion and public health at Columbia College. My first job was coordinating support services for two alternative-to-incarceration sites in the South Bronx for the Vera Institute of Justice.

My parents taught me to work for the betterment of the world in whatever little way I can manage. There I was a kid in the South Bronx trying to find housing, drug treatment, family reunification, jobs, education, and health care for a bunch of guys, and I would have long conversations about whatever was troubling them. I learned a lot from those men, and it really developed my commitment to criminal justice reform.

What advice would you give to other people or couples who are thinking about making out their wills for the first time?

Make the will. Think about giving away some of your money while you are alive and then some more after you are gone.

If you would like to include The Sentencing Project in your estate plans, please contact an estate planning attorney. And to let us know about your plans, you may call Development Director Angela Boone at (202)628-0871.

Rachel Porter: young mom creates charitable legacy

The New York Times

July 23, 2009

“The expansion of life sentences suggests that we’re rapidly losing faith in the rehabilitation model.”

-Ashley Nellis, Research Analyst, on The Sentencing Project’s report, No Exit: The Expanding Use of Life Sentences in America

TIME

August 7, 2009

“If we’ve been doing something that’s unfair for 23 years now, don’t we have an obligation to address that unfairness?”

-Marc Mauer, Executive Director, on the need for Congress to apply proposed new crack cocaine sentencing laws retroactively

The Christian Science Monitor

September 1, 2009

“While the early releases are important, that still doesn’t address the engine of growth that are the sentencing laws. There are too many people going into prison and they are staying there too long.”

-Ryan King, Policy Analyst, on California prison overcrowding
A new clearinghouse of information on race and the criminal justice system has just been unveiled by The Sentencing Project. This unique and valuable resource contains more than 400 references for books, articles and reports on race and ethnicity as they interact with the criminal justice and juvenile justice systems.

“This resource fills a vital need in the criminal justice policy community,” said Research Analyst Ashley Nellis. “Advocates, policymakers and members of the media can go right to our website, and access range of materials on subjects like juvenile justice, racial profiling or prosecution, courts and sentencing.”

In conjunction with the Race and Justice Clearinghouse, The Sentencing Project is building a new Race and Justice Network. The network will connect advocates, researchers and policymakers across the country to share news, research and ideas for addressing racial disparities. To join the Race and Justice Network, and begin receiving our new Race and Justice News e-newsletter, sign up at www.sentencingproject.org, or send an email to staff@sentencingproject.org with Race and Justice Network in the subject line.

To submit an article or resource for the clearinghouse, email Ashley Nellis at anellis@sentencingproject.org