

## **Mistake with drug sentencing guidelines need to be resolved**

By Eric E. Sterling

Two months ago, the U.S. Supreme Court held the compulsory feature of the federal sentencing guidelines unconstitutional. Congress's principal goal in creating the guidelines in 1984 was to achieve more uniform sentencing across the country for similar offenders. Since January, many commentators have feared that the goal of uniformity may be lost. Too bad, but what America really needs is effective sentencing.

In 1986, I helped Rep. Howard Coble, then a freshman Member of Congress, and other Members of the House Judiciary Committee write mandatory minimum sentences for drugs to create "effective" sentencing to fight the drug problem. Congress wanted the Justice Department to concentrate on the major drug traffickers. If federal law enforcement agencies drove the high-level traffickers out of the drug business, there wouldn't be any cocaine or other drugs for the street dealers to sell.

Congress' goal was clear, but it made a mistake that soon became obvious. We defined high-level traffickers by using quantities that were too small. One senior Democrat feared that if we wrote into the law large quantities of drugs (based on DEA's classification of high-level traffickers), the heavy sentences would never be used in his mid-America city, remote from the main drug trafficking routes.

Those small quantities – especially the 5 grams and 50 grams of crack cocaine which trigger mandatory minimum 5- and 10-year prison terms – have become well-known because the defendants in those cases are overwhelmingly African-American and Hispanic. These quantities are typical of local street dealers.

Congress mandated long sentences – up to 40 years and life imprisonment for first offenders -- that would effectively punish major dealers. But the quantities Congress enacted were not those of the kingpins or cartel leaders who arrange for the plane loads and boatloads with tons of cocaine that supply the street dealers.

But the Justice Department has compounded the mistake according to the research of U.S. Sentencing Commission. (See [http://www.ussc.gov/r\\_congress/02crack/2002crackrpt.htm](http://www.ussc.gov/r_congress/02crack/2002crackrpt.htm) ) The Justice Department lets its local offices focus on low-level cases. For example, less than 7 percent of all federal cocaine convicts in 2000 were high-level dealers. But more than 70 percent were the lowest-level participants: street dealers, lookouts, unloaders, couriers, etc. As a result of mandatory minimum sentences, street-

level crack dealers serve longer sentences on average (104 months) than cocaine importers and high-level suppliers (101 months).

The marketplace measures availability of drugs very well. If the prosecutions and sentences obtained by the Justice Department were effective in stopping the high-level traffickers, we would have drug scarcity and higher prices. However, since 1980, the prices of cocaine and heroin have gone down steadily. Even worse, the street-level purity and availability of cocaine and heroin have been going up. Average street purchases of heroin in 1986 were 11 percent pure, but are 40 percent pure now, according to DEA. We aren't supposed to have better, cheaper illegal drugs.

Congress should replace the bad mandatory minimum drug sentences with a realistic number for major level drug dealers -- say, 50 kilos of cocaine -- to encourage proper priorities at the Justice Department. Or, the new attorney general could determine that when DEA wants to make a federal case out of less than 50 kilos of cocaine the U.S. attorney should seek approval from him or one of his top deputies, otherwise turn the case over to the state and local authorities.

The Justice Department defends its small potatoes cases, saying it builds cases against high-level offenders from the bottom up. But that strategy has not been effective in stopping drugs, and mandatory minimums have led to unjustly long sentences for low-level offenders and dealers' girlfriends.

Defenders of small potatoes drug enforcement also argue that people want crack dealers to stop selling on their corner or at their kid's playground. Of course we do. But two decades of the Department of Justice's emphasis on low-level cases seems to create street corner job openings more than it deters potential drug dealers. The corner dealer will quit when he can't get any supply. That's why Congress and the Justice Department should make effective drug enforcement the priority.

In 1995, Congress rejected a fix of the cocaine quantity triggers with some members warning the change would "send the message" that "crack dealing is OK," as if a sentence of up to 40 years for a first offense is a slap on the wrist. Congress needs to send a message to the Justice Department, "It's time to get effective!" The old mandatory minimums don't work and should be repealed.

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