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CONGRESS MUST FIX INEQUITABLE DRUG SENTENCES

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At issue | Jan. 2 commentary by Barry C. Scheck, "Congress must end senseless sentencing"

Barry Scheck's commentary urging sensible and equitable reform of federal mandatory minimum sentencing laws omitted their most indefensible and racially discriminatory aspect: the gaping disparity in penalties for drug offenses involving powdered cocaine and those involving crack cocaine.

Federal law subjects any person guilty of a drug offense involving 5 grams or more of crack cocaine to a mandatory minimum sentence of five years. But the amount of powdered cocaine necessary to earn the same sentence is 500 grams.

The U.S. Sentencing Commission and Congress acknowledged in the mid-1990s the absence of any policy justification for this disparity even while detailing its racially discriminatory effect. Having allowed this overwhelming evidence to languish for a decade, let us hope that Congress will now act to sensibly cure this injustice.

The sentencing commission twice reported in the mid-1990s on the racially discriminatory effect of the ratio between the penalties prescribed for crack and powdered cocaine.

In 1995, the commission reported that "sentencing data leads to the inescapable conclusion that blacks comprised the largest percentage of those affected by the penalties associated with crack cocaine." It found that as of 1993, black Americans accounted for 88.3 percent of federal crack cocaine convictions.

In April 1997, the commission reported that "nearly 90 percent of the offenders convicted in federal court for crack cocaine distribution are African-American while the majority of powdered cocaine users are white."

A number of federal appeals courts have recognized the undeniable statistical evidence regarding the ratio's disparate and discriminatory racial impact. All of this led the commission to recommend in both 1995 and 1997 that the ratio disparity be eliminated.

The overwhelming evidence caused the House Judiciary Committee in 1995 to observe that while "the evidence clearly indicates that there was significant distinctions between crack and powdered cocaine that warrant maintaining longer sentences for crack related offenses, it should be noted that the current 100-to-1 quantity ratio may not be an appropriate ratio."

The Judiciary Committee further observed that amendments were needed to "uphold basic principles of equity" in the federal criminal code. Nonetheless, no reform was achieved, and another decade of mounting injustice has followed.

Even in 1995, it was recognized that relevant scientific data and empirical evidence did not support the ratio disparity between crack and powdered cocaine. Crack was once thought to be pharmacologically distinct from powdered cocaine, but, while differing in composition, texture, appearance and usual means of consumption, crack and powdered cocaine are comprised of

cocaine hydrochloride and produce similar physiological and psychotropic effects, the sentencing commission reported in 1995.

As far back as 1991, the Department of Justice had determined that powdered cocaine was a more popular drug than crack, with five times more powdered cocaine users than crack users.

The physiological dangers posed by powdered cocaine, one court has observed, are greater than for crack because powdered cocaine poses a greater risk of heart and lung disease than crack, and the death rate among powdered cocaine users is three times higher than the rate for crack users.

The sentencing commission has found that stereotypical conceptions of crack users being more prone to violent crime is not supported by evidence or experience, although a greater percentage of all crack offenders carry weapons, a factor that, as Scheck notes, greatly increases federal sentences.

The sentencing commission reported in 1995 that contrary to popular perception, there was no reliable data to establish that crack contributes to more births of cocaine-addicted babies than powdered cocaine does.

Powdered cocaine is a necessary precursor to crack cocaine. Crack cocaine cannot be manufactured without powdered cocaine, as the sentencing commission reported in 1995.

The racially discriminatory disparity in federal sentencing laws for powdered and crack cocaine is a direct and severe affront to equity and justice. A decade ago, the sentencing commission and Congress acknowledged the absence of any sound policy grounds to excuse this pernicious law.

Congress should act to eliminate this indefensible disparity.

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