

Take another crack at that cocaine law

By Eric E. Sterling

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ONE OF OUR MOST infamous contemporary laws is the 100-1 difference in sentencing between crack cocaine and powder cocaine. Under federal drug laws, prison sentences are usually tied to the quantity of drugs the defendant trafficked. For example, selling 5,000 grams of powder cocaine (about a briefcase full) gets a mandatory 10-year prison sentence, but so does selling only 50 grams of crack cocaine (the weight of a candy bar).

Working for the House Judiciary Committee in 1986, I wrote the House bill that was the basis for that law. We made some terrible mistakes.

Those mistakes, aggravated by the Justice Department's misuse of the penalties, have been a disaster. Conventional wisdom is that the 100-1 ratio needs to be repealed. But that's an inadequate fix.

On Tuesday, the U.S. Sentencing Commission — the independent agency that gives sentencing guidelines to federal judges and advises Congress — will hold hearings on this issue. If logic prevails, in the next Congress we may finally see an end to one of the most unjust laws passed in recent memory. And that might correct the biggest mistake of my professional life.

We still cling to 20-year-old ideas that crack is somehow uniquely harmful: It is instantly addictive; it makes you especially violent; it causes women to abandon their babies; the babies of crack users will be basket cases. None of these are true.

Also, because crack is no longer a big news story, people mistakenly believe our anti-cocaine policy has worked. Not so. There is no scarcity of cocaine. Since 1986, the price of cocaine has fallen and the quality is better. Cocaine deaths have increased. The number of crack users is basically unchanged.

Drug sentences are on the national agenda again because civil rights supporters are justifiably outraged that almost all federal crack prosecutions involve people of color. And indeed, for years no whites were prosecuted for crack offenses in many federal courts, including those in Los Angeles, Chicago, Miami, Denver, Dallas or Boston.

Because of that, the myth developed that Congress intended to punish blacks — believed to be the crack users — with long sentences and let the white powder cocaine sniffers of Hollywood and Wall Street get away with light sentences. But that's not the case. Congress was trying to remedy a problem it believed afflicted the black community.

A second myth is that Congress chose a 100-1 ratio because it determined that crack was 100 times worse than powder cocaine. But the weights chosen (5 and 50 grams, versus 500 and 5,000 grams) weren't based on a comparison of the two drugs. Congress had no clear understanding of drug trafficking — or the metric system — and thought those weights indicated significant trafficking activity. In fact, *tons* (millions of grams) of cocaine are shipped to the U.S. by the leaders, organizers and financiers of the international drug trade.

The law was flawed, but the Justice Department still could have used it to target high-level traffickers. But research from the U.S. Sentencing Commission shows that three-quarters of the federal cocaine defendants — powder and crack — are just neighborhood dealers or couriers.

Congress should do what it tried to do in 1986 — make the Justice Department focus exclusively on high-level cases because state and local law enforcement cannot. There are three elements to fix the problem: Raise the quantity triggers for all drugs to realistic levels for high-level traffickers, such as 50 or 100 kilos of cocaine, and end the crack/powder imbalance; Require the attorney general to approve prosecution of any case involving less than 50 kilos of cocaine; Analyze federal drug cases district by district to identify agents and prosecutors who waste their time and our money. If only high-level dealers were being prosecuted by the feds, no one would have cause to complain about the race of the defendants.

A promising sign is that a few months ago, Sen. Jeff Sessions (R-Ala.), a former U.S. attorney, introduced legislation to address the problem. Action on his bill is unlikely before Congress adjourns, but it had bipartisan support — a good sign that a political fix is viable.

The 20-year-old mistake of tiny quantity triggers has distracted both the Justice Department from the proper cases and reformers from the proper fix.

For a generation, anti-drug policy has been built on factual mistakes and tough-sounding rhetoric.

The American people simply need an effective policy. Truly, that would be tough enough.