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Lawmakers again fail to address drug sentencing disparity

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WASHINGTON - Congress is headed toward adjournment again this year without acting on what is widely viewed as an indefensible sentencing disparity between federal drug offenses involving crack and powder cocaine.

Although nearly everyone agrees that the uneven treatment the two drugs receive under federal sentencing laws is unfair, Democrats and Republicans have been locked in a stalemate for more than a decade over the proper fix.

That stalemate, unlikely to break before Democrats regain control of Congress, has left in place a system that frequently sends black, inner-city defendants to jail for more than a decade over quantities of crack that would fetch far shorter sentence for powder-cocaine offenders.

"It can't be sustained on public policy arguments," said Sen. Jeff Sessions, an Alabama Republican and former federal prosecutor who has co-sponsored a bill to address the issue since 2001. "Congress has mandated these sentences and we should constantly monitor what we did and adjust it for fairness."

Sessions' bill has stalled because many Democrats believe it doesn't go far enough to address the problem, and could in part aggravate it.

Under the current law, passed amid the crack epidemic of the 1980s, trafficking in 5 grams of crack cocaine - about the weight of a nickel - calls for a mandatory minimum five-year prison sentence. The same sentence for powder cocaine requires 500 grams.

Sessions' bill, which he plans to reintroduce next year, would increase the amount of crack triggering the five-year sentence from 5 grams to 20 grams, while raising the trigger for an automatic 10-year sentence from 50 grams to 200 grams.

At the same time, the bill would lower the quantities of powder cocaine warranting such sentences, from 500 grams to 400 grams for a five-year sentence and from 5 kilograms to 4 kilograms for a 10-year sentence.

Although Sessions' bill has two Democratic co-sponsors, many Democrats say it would perpetuate significant inequities while creating more arbitrary and unnecessarily long sentences for powder cocaine offenders. With backing from the legal community, Democrats instead have called for further reducing the mandatory sentences or for getting rid of mandatory minimums for drug offenses altogether and giving judges more discretion.

With Democrats taking control of Congress, incoming Senate Judiciary Committee Chairman Patrick Leahy of Vermont and fellow committee Democrats will likely take up the issue soon, said Tracy Schmalzer, Leahy's spokeswoman. But with narrow majorities in both the House and Senate, it remains unclear whether any of the Democratic proposals could pass.

Law enforcement groups as well as the Justice Department continue to argue that stiffer penalties for crack are

warranted because of the drug's strong connection with violent crime in poor neighborhoods.

"There's violence associated with both, but the nature of the way crack cocaine is retailed lends it to a higher degree of local street violence than powder cocaine does," said Jim Pasco, executive director of the national Fraternal Order of Police, which supports raising penalties for powder cocaine to balance the sentencing gap.

Sessions acknowledged that many of his colleagues are wary of appearing soft on crime by reducing penalties.

But critics of the current system, including many federal judges and legal groups such as the American Bar Association, argue that it is devastating inner-city neighborhoods - more than 80 percent of the crack offenders are black - while clogging federal prisons with low-level drug dealers.

In testimony before the U.S. Sentencing Commission earlier this month, U.S. District Judge Reggie B. Walton, a former deputy drug czar for the first President Bush, called the disparity "unconscionable."

The commission, an independent agency created by Congress to monitor federal sentencing laws, has recommended changes to the current structure three times since 1995, including an initial recommendation to eliminate the disparity by lowering crack sentences.

The commission is again reviewing the disparity.

According to the commission, 25,762 drug offenders were prosecuted under the federal sentencing laws in 2005. Almost half of those cases involved crack or powder cocaine.