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Congress Is Expected to Revisit Sentencing Laws

By [LYNETTE CLEMETSON](#)

WASHINGTON, Jan. 8 — Federal sentencing laws that require lengthy mandated prison terms for certain offenses are expected to come under fresh scrutiny as [Democrats](#) assume control of Congress.

Among those eagerly awaiting signs of change are federal judges, including many conservatives appointed by Republican presidents. They say the automatic sentences, determined by Congress, strip judges of individual discretion and result in ineffective, excessive penalties, often for low-level offenders.

Judges have long been critical of the automatic prison terms, referred to as mandatory minimum sentences, which were most recently enacted by Congress in 1986 in part to stem the drug trade. Now influential judges across the ideological spectrum say that the combination of Democratic leadership and growing Republican support for modest change may provide the best chance in years for a review of the system.

“With a changing of the guard, there should at least should be some discussion,” said William W. Wilkins, chief judge of the United States Court of Appeals for the Fourth Circuit, who was nominated by President [Ronald Reagan](#).

The House Judiciary Committee, under the new leadership of Representative John Conyers Jr., Democrat of Michigan, is planning hearings on the laws, starting later this month or in early February. One of the first issues planned for review is the sentencing disparity between offenses involving powder and crack cocaine.

The possession or trafficking of crack brings much harsher penalties than those for similar amounts of the powder form of the drug. Mr. Conyers, a longtime critic of mandatory minimum sentences, favors treating both drugs equally.

The Senate Judiciary Committee has no immediate plans for hearings. But Senator Jeff Sessions, Republican of Alabama, also supports some changes in the sentencing policy for crack cocaine

convictions (though more modest than Mr. Conyers and some other Democrats favor), and Judiciary Committee staff members say a serious Senate review of the issue is likely in the current Congress.

Many law enforcement officials support tough, automatic sentences and argue that weakening existing laws will cause an increase in drug trafficking and violent crime. Many judges say current laws have clogged jails and too often punish low-level offenders. Some judges also argue that automatic lengthy sentences give prosecutors an unfair bargaining tool that they can use to tailor charges and press defendants into plea bargains.

“These sentences can serve a purpose in certain types of cases involving certain types of offenders,” said Judge Reggie B. Walton of Federal District Court in the District of Columbia, who was appointed by President Bush, “but when you apply them across the board you end up doing a disservice not just to individuals but to society at large.”

Several judges say that broad inclusion in the coming Congressional hearings on sentencing would mark a notable departure from Judiciary Committee activity under the former Republican chairman, Representative F. James Sensenbrenner Jr. of Wisconsin, who many judges say maintained an antagonistic stance toward judges.

“There was no question that judges were targeted under the Sensenbrenner committee for speaking out,” said Judge Nancy Gertner, a Federal District Court judge appointed by President [Bill Clinton](#) who teaches a course on sentencing policy at [Yale](#) Law School.

Judge Gertner and others point to the example of Judge James Rosenbaum, a Reagan appointee who, in 2003, faced a Congressional review of his sentencing decisions under a barrage of criticism that he and other federal judges were too lenient. Many in the judicial community argued that Judge Rosenbaum was singled out because he criticized a proposal to increase federal sentences in testimony before the House Judiciary Committee.

Most judges shy away from direct formal involvement in legislative matters. But many say private interactions with legislators that do not focus on specific cases but on policy matters of concern to the judiciary are appropriate.

Judge Wilkins, a former legislative assistant to Senator [Strom Thurmond](#), said he believed private conversations on mandatory minimum sentences with his own congressman, Representative Bob Inglis, Republican of South Carolina, helped change the legislator’s position.

Mr. Inglis, once a supporter of tough automatic sentences, said during a 1995 House vote that he would never vote for them again and has since become [a Republican](#) leader on sentencing reform.

“I was delighted that he took a principled stand, and I would like to think I was of some benefit to him in

getting there,” said Judge Wilkins, who served as the first chairman of the Federal Sentencing Commission, the body charged by Congress with developing sentencing guidelines and collecting and analyzing statistics.

Some judges have expressed displeasure with the system from the bench or in written opinions.

At a sentencing last January Judge Walter S. Smith Jr., of the Western District of Texas, was required to add 10 years to the already mandated 10-year sentence in a crack distribution case because a gun was found under the defendant’s bed. During the sentencing, the judge stated, “This is one of those situations where I’d like to see a congressman sitting before me.”

In an impassioned written opinion in 2004, Judge Paul G. Cassell of the Federal District Court in Utah, who was appointed by President Bush, called the mandatory 55-year sentence he was forced to give a low-level marijuana dealer who possessed, but did not use or brandish, a firearm “simply irrational.”

In the opinion, Judge Cassell recommended a commutation of the sentence by the president, noting that the sentence, with consecutive 25-year terms for firearm possession, was longer than those required for an airport hijacker, second-degree murderer or a rapist.

The Supreme Court declined last fall to hear the case. But an amicus brief urging the court to take the case included signatures from legal figures like William Sessions, the former [F.B.I.](#) director; [Janet Reno](#), attorney general during the Clinton administration; and Griffin Bell, attorney general under [Jimmy Carter](#).

Many opponents of mandatory minimum sentences would like to see a full repeal of the laws. “After so many years of this, people have forgotten that we should be asking for the whole fix, not just little pieces,” said Julie Stewart, president of Families Against Mandatory Minimums.

But most legal, legislative and judicial experts agree that repeal, or even broad-ranging overhaul of existing laws, is unlikely. More probable is serious review of crack cocaine sentencing laws.

Currently, possessing five grams of crack brings an automatic five-year sentence. It takes 500 grams of powder cocaine to warrant the same sentence. Similarly disparate higher amounts of the drugs results in a 10-year sentence. The 100-to-1 disparity, opponents of the law say, unfairly singles out poor, largely black offenders, who are more likely than whites to be convicted of dealing crack cocaine.

At a sentencing commission hearing in November, Judge Walton, associate director of the White House Office of National Drug Control Policy under the first President George Bush and a onetime supporter of tough crack cocaine sentences, said it would be “unconscionable to maintain the current sentencing structure” on crack cocaine.

Mr. Sessions is a co-sponsor of a bill that would change the ratio for the two drugs to 20 to 1, increasing the amount of crack that brings a five-year sentence to 20 grams from 5, and lowering the powder cocaine trigger from 500 grams to 400 grams.

If judges say they are hopeful for new debate on sentencing policy, they are quick to add that they are not naïve. After all, many say, even politicians who are critical of current laws fear looking soft on crime.

“Candidly, the Democrats were never particularly courageous on this issue either,” Judge Gertner said. “But at least now it seems judges may be encouraged to be a part of the discussion. And if asked to speak up, I think many will.”

Sabrina Pacifici contributed reporting.

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