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Sentencing Guidelines Face New Scrutiny

New Congress to Examine Minimum Mandates; Crack Requirements Will Get First Test

 By **GARY FIELDS**
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WASHINGTON -- With Democrats poised to take control of Congress, law-enforcement officials are preparing to defend two decades of federal sentencing policies that mandated harsh prison terms on a variety of crimes and led to a boom in the prison population.

Michigan Rep. John Conyers, the incoming chairman of the House Judiciary Committee, and Rep. Robert Scott (D., Va.) have already said they plan hearings early in the term to look at how nonviolent drug offenders are punished under mandatory minimum laws.



John Conyers

An early target will be the prison terms mandated by Congress for crack-cocaine convictions. Under current law, someone caught with five grams of crack gets a five-year sentence, while it takes 500 grams of powder cocaine to trigger the same sentence, even though there is no physiological difference. Critics have long maintained that the law unfairly targets African-American communities, where crack is more prevalent. In

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contrast, suburban white users tend to prefer cocaine in its powder form.

Mr. Conyers has called the crack-cocaine sentences the "most outrageous example of the unfairness of mandatory minimums."

Democrats are buoyed by recent signals from the U.S. Sentencing Commission, which sets guidelines for judges to use in an advisory capacity when they hand down sentences. Members of the commission are likely to recommend a change in the crack-cocaine penalties next year, according to commission members. The commission has tried since 1995 to bring the penalties for crack crimes more in line with powder cocaine but the Republican-controlled Congress has ignored past attempts.

Soft on Crime

Reversing drug laws, though, is politically dangerous, for it risks angering law-enforcement officials and police unions. In addition, it could resurrect the soft-on-crime mantra that Republicans have long used to bludgeon Democrats. As a result, some Democrats might be reluctant to be viewed as rolling back harsh sentences just when the nation's violent crime is starting to rise.

"Whenever you suggest somebody's sentence is too long or a policy is too draconian, the immediate reaction in the political arena is you're soft on crime and you're not taking public safety seriously," says Alexander Busansky, director of the Washington office of the Vera Institute of Justice, a criminal-justice reform organization based in New York.

That claim, though, may no longer be as effective, he adds. Some Republicans have spearheaded efforts to reduce recidivism, and the effort to address the crack-cocaine disparity has attracted some bipartisan backing.

Nevertheless, law-enforcement officials -- from the Justice Department to police groups -- are joining forces to oppose any changes that decrease the severity of the crack penalty, warning that it's a slippery slope that could weaken other mandatory sentences.

"Our position on crack versus powder has been to increase the penalty for powder cocaine, not decrease the punishment for crack," says Gene Voegtlin, of the International Association of Chiefs of Police, which represents 18,000 chiefs, department heads and other law-enforcement officials.

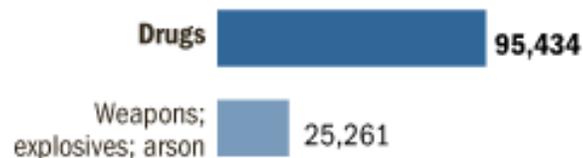
Prisoners in Their Own Homes

Crime and Punishment

Democratic control of Congress will give critics a chance to challenge racial disparities that emerged under tough federal sentencing guidelines for drug crimes.

Drug charges swell inmate ranks...

Number serving time in federal prison as of Friday, ranked by offense.

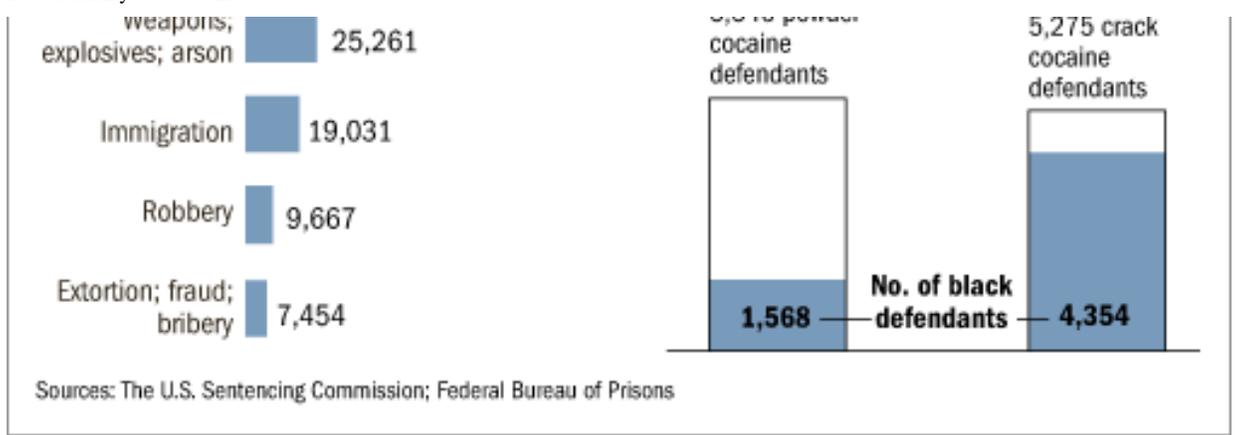


Exposing sharp divide

The number of black defendants sentenced on federal crack cocaine charges is higher than those sentenced on powder cocaine charges, as of fiscal year 2005

5,540 powder
cocaine
defendants

5,275 crack
cocaine



Street cops agree with this view as well, says James Pasco, of the Fraternal Order of Police, which represents about 324,000 street-level police officers, deputies and agents. Mr. Pasco says there is more violence attached to crack-related crimes, making residents in the communities where these crimes occur -- often poor, urban areas -- prisoners in their own homes. "We're not opposing this because of its impact on law enforcement. We're opposing this because of its impact on the communities we protect," says Mr. Pasco.

Law-enforcement groups, however, need to push back not too hard, lest they anger Democrats who control funding over various programs that benefit local police. For example, Rep. Bennie Thompson (D., Miss.), who co-sponsored a crack-powder penalty-equalization bill in the last Congress, is the incoming chairman of the Homeland Security Committee. He plans to push an agenda to improve intelligence sharing and communications ability between federal and local law-enforcement officials, a key goal for police groups.

The police groups' biggest ally in preventing a reversal of mandatory minimums will be Republican lawmakers, such as Rep. Lamar Smith of Texas, who will be the ranking minority member on the House Judiciary Committee.

"The sentencing disparity between possession of crack cocaine and powder cocaine is a valid issue, and I look forward to a discussion next year," says Mr. Smith. "But we need to remember that the drug trade is directly linked to the level of violent crime in America. This week, the [Federal Bureau of Investigation] reported the number of violent crimes committed in 2005 rose more than it has in any of the last 15 years.... We need tough drug laws that deter drug abuse -- not increase it."

At least one advocacy group that opposes the mandatory minimums believes the debate is being couched incorrectly. Julie Stewart, founder and president of Families Against Mandatory Minimums, says lawmakers should look at the crack-cocaine sentencing and decide whether it is fair on its own merit, not in comparison with powder cocaine.

"The problem is not powder cocaine. The problem is crack," she said. If five grams is not an amount handled by a major trafficker, "then let's figure out what quantity is more reflective of someone who is dealing at a higher level," she said. "We shouldn't be focused on ratio between the two."

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