

LEGAL REVIEW

Momentum builds to change cocaine/crack disparities

by **Marcia Coyle**
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Attempts to eliminate or alleviate the 100-to-1 sentencing disparity for crack and powder cocaine offenses are gaining momentum in three different arenas this fall.

For the first time in more than a decade, a hearing on the drastically different penalty structure for those two offenses will be held next month in the Senate, which itself now has three bills, two with bipartisan support, pending. The House has two bills that would equalize the penalties, but in different ways.

On Oct. 2, the U.S. Supreme Court will hear arguments in a case asking whether a district court, in imposing a sentence that is "sufficient but no more than necessary," may consider the impact of the 100-1 sentencing disparity or the reports and recommendations of the U.S. Sentencing Commission on the disparity. The case *Kimbrough v. U.S.*

In addition, a wide-ranging effort is under way to persuade the Sentencing Commission to make retroactive its proposed guideline amendment modestly lowering offense levels for crack cocaine. The amendment is scheduled to take effect Nov. 1 unless Congress rejects it.

"I don't feel comfortable predicting but I do feel this is a really exciting time," said Mary Price, vice

'It's very telling that Senator Biden will hold a hearing on this issue and that the Senate...is willing to be out there on this issue,' said Jessalyn McGurdy, legislative counsel to the American Civil Liberties Union.

president and general counsel of Families Against Mandatory Minimums, noting the new momentum on the issue.

"All this activity around crack cocaine gives us an opportunity to talk about wider sentencing reform, particularly mandatory minimums," she added. The House Judiciary Committee held hearings earlier this year on mandatory minimum sentences, Price said, adding, "That discussion is gaining momentum as well."

In 1986, Congress enacted the Anti-Drug Abuse Act that imposed mandatory penalties for crack cocaine offenses. The drug laws treat trafficking and simple possession of crack — an inexpensive smoked form of cocaine — more severely than powder cocaine. Distributing five grams of crack, for example, carries a mandatory minimum prison sentence of five years while dis-

tributing 500 grams of powder cocaine carries the same prison term. The Sentencing Commission and others long have held that the disparity disproportionately affects minorities and low-level offenders.

The five bills in Congress and their chief sponsors are: S. 1711 (Sen. Joseph Biden, D-Del.); H.R. 460 (Rep. Charles B. Rangel, D-N.Y.); S. 1685 (Sen. Orrin Hatch, R-Utah); S. 1383 (Sen. Jeff Sessions, R-Ala.); and H.R. 79 (Rep. Roscoe Bartlett, R-Md.).

"It's very telling that Senator Biden will hold a hearing on this issue and that the Senate, with the slimmest of majorities, is willing to be out there on this issue," said Jessalyn McGurdy, legislative counsel to the American Civil Liberties Union. "We can only hope that after more than 20 years, something will be done."

The Sentencing Commission has opened a public comment period until Oct. 1 on whether it should apply retroactively its most recent amendment to the crack-powder cocaine guidelines. That amendment, intended to ease the 100-1 disparity, will reduce sentences by an average of 16 months for approximately 78 percent of those convicted of crack-cocaine offenses. ■

Marcia Coyle reports for the National Law Journal, an ALM Media affiliate of the Daily Business Review.

Events

Today

Miami Beach Bar Association: Meeting, noon, Miami Beach Golf Club, 2301 Alton Road. Topic: Prosecuting public corruption. CLE credit. Cost: \$15 judges, \$30 members, \$40 nonmembers. Call (305) 262-4433.

OF NEW YORK:

Nerlin Ontivero, previously an associate with the Law Office of Marshall C. Watson, has law and bachelor's degrees from Nova Southeastern University.

Samuel Landol Jr., formerly an associate with Bakalar & Eichner, has a law degree from Suffolk University and a bachelor's degree from the University of Central Florida.



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Landol

Appointments

• **Scott Schlesinger**, an attorney with Sheldon J. Schlesinger P.A., has been named to the University Press of Florida Foundation's board of directors. ■