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Obama administration calls for complete elimination of sentencing disparity between crack and powder cocaine offenders

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ROBERT K. GORDON

News staff writer

After a 2007 decision that narrowed the difference between federal court sentences for crack cocaine and powder cocaine, the U.S. Justice Department is now, for the first time, calling for a "complete elimination" of any disparity of penalties on convictions tied to the two forms of cocaine.

"It would be hard to overestimate the significance of this step," said Adam Lankford, a criminal justice professor at the University of Alabama. "There is no doubt that the disproportionate sentences punish African-Americans engaged in similar crimes as whites and Hispanics."

In testimony recently before a Senate Judiciary Committee panel, Lanny Breuer, criminal division chief at the Department of Justice, said the Obama administration supports the "complete elimination" of the sentencing disparity between the two drugs. The disparity often results in crack cocaine offenders - mostly African-Americans - being sentenced to long prison terms while similar offenses with powder cocaine routinely net lighter sentences.

Efforts to end the disparity over the years have gained little traction. The U.S. Sentencing Commission did amend the federal sentencing guidelines in 2007 to bring the sentences more in line. But there still is a so-called 100:1 ratio.

Possession of 5 grams of crack cocaine - enough to fill five Sweet'N Low packets - means a mandatory five years in prison. Five grams of powder cocaine would likely get an offender probation. It takes 500 grams of powder cocaine to get a five-year sentence.

According to a 2007 Sentencing Commission report, 82 percent of all crack cocaine offenders are black. Blacks make up 27 percent of powder cocaine offenders, Hispanics 55 percent and whites 15 percent, the report said.

Crack abuse was seen as epidemic in inner cities, and Congress passed the Anti-Drug Abuse Act as a get-tough measure. Lankford said the disparity in the sentencing laws only fuels the perception that the system is rigged against blacks.

"This would be getting rid of a law that seems to be antiquated and symbolizes everything that is wrong with the system," he said of the Justice Department's proposal.

Defense lawyer Samuel Holmes said he recently had a client who was sentenced to 80 months in prison for a crack cocaine offense. Had the drug been powder cocaine, the sentence would have been 35 months, Holmes said.

"This would be very significant," Holmes said. "I hate to say this, but the disparity does appear to be racial. I hope it goes through. I have plenty of clients that this would help down the road."

Sessions' stance:

Sen. Jeff Sessions, who has often called for changing the crack cocaine sentencing guidelines, said he supports closing the gap, not eliminating it altogether. Legislation proposed by Sessions over the years calls

for mandating that 20 grams of crack would trigger a mandatory five years in prison. His bill also would lower to 400 grams the amount of powder cocaine it would take to get a five-year sentence.

The current sentencing laws are too stringent to be public policy, Sessions said, but completely eliminating the sentencing gap goes too far because something is needed to act as a deterrent. "That would be an error. That's far too large a change. It represents a huge alteration in the criminal sentencing procedure," Sessions said.

Sessions said he has had discussions with Attorney General Eric Holder on the issue.

"It looks like the administration is prepared to go further on this than I thought," Sessions said.

Ron Brunson, a defense lawyer and former federal prosecutor, said he believes the sentencing disparity is unfair and hopes any action by Congress would mean relief for those already serving long sentences. Brunson said the Sentencing Commission's 2007 amendment has provided some relief because it allows an inmate to petition a judge for a lower sentence.

That does not always work, Brunson said.

"A lot of the judges are relying on the old law. I'm hoping this starts a new trend and ends the trend of Bush-era policies of putting and keeping people in jail. That is a terrible way of doing things."

Defense lawyer Glennon Threatt said the sentencing disparity "is like giving drunk drivers different penalties if they drank champagne versus beer."

Threatt, however, differed with other defense lawyers by saying there does need to be a disparity with crack cocaine.

"There is a relationship between crack and violence," Threatt said. "There needs to be a disparity, but not 100:1."

E-mail: rgordon@bhamnews.com

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