

The Miami Herald

Posted on Wed, Apr. 29, 2009

Make drug sentences more fair

BY JOHN F. TIMONEY

john.timonwy@miami-police.org

Most people in the criminal-justice system are aware of a problem with the federal laws governing sentences for cocaine offenses -- penalties for crack-cocaine offenses are much stiffer than sentences for powder cocaine. This undermines trust in the criminal-justice system, and it has strong racial effects unhealthy to our society.

The federal Anti-Drug Abuse Act of 1986 created a mandatory five-year prison term for offenses involving five grams of crack. But an offender must have 100 times as much powder cocaine to trigger the same five-year sentence.

If I grab a guy carrying five grams of crack, less than a fifth of an ounce, I figure this is a low-level drug dealer, or maybe someone with a lot for his own consumption. If I arrest a guy with 500 grams of powder cocaine, more than a pound, I figure this is a trafficker. Yet the federal law set the same penalty for both.

The U.S. Sentencing Commission, a panel that Congress created in 1984 to write sentencing guidelines for federal judges to make sentences fairer and more uniform, for years urged Congress to amend cocaine laws to reduce that 100-to-1 disparity. In 2007, the Commission took some limited action to decrease the sentencing guidelines for crack cocaine offenses and made the changes retroactive. The Commission said the sentencing system for cocaine offenses had come under "almost universal criticism" from judges, criminal-justice officials, academics and community groups.

Prisoners convicted of crack crimes have been getting some relief under the Commission's action. But only Congress can address mandatory penalties that still apply.

The disparity came about in the 1980s, when the nation was frightened by the crack cocaine epidemic and was told that crack is a lot more deadly than powder cocaine and caused more violence. Experts have discounted those claims. Having this disparate impact in sentencing based on an artificial distinction about the particular form of the same drug creates mistrust in the justice system.

And while fewer than half of crack cocaine users are black, 82 percent of crack cocaine defendants in 2006 were African American, according to the Commission. Only 27 percent of powder cocaine defendants were black. The result is that blacks end up serving longer terms in federal prison for drug offenses -- about the same as whites serve for violent crimes. That is unfair. The longer these disparities remain in effect the more it creates a perception of racism in the justice system.

Today, most police agencies try to prevent crime and reduce crime rates. We must work with our communities. We rely on residents to tell us what is happening in neighborhoods and cooperate as we investigate crime patterns and try to solve problems contributing to crime. People's trust in police is damaged if they see them as part of an unfair system.

When unfair laws are passed, officers see the impact. People notice and become cynical. In 1974 when President Ford issued a pardon to former President Nixon. I was a young cop in the Bronx, and I was

amazed at how people would throw it back in our face if we made an arrest; they'd say, ``Oh, Nixon gets pardoned; only poor people get arrested."''

A lot of that was street-level nonsense, but the point is that police departments face a difficult challenge gaining the trust of communities if glaring inequities in the justice system are allowed to persist.

John Timoney is Miami's police chief.

© 2009 Miami Herald Media Company. All Rights Reserved.
<http://www.miamiherald.com>