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## **Early release proposed for crack cocaine offenders**

**Atty. Gen. Eric H. Holder Jr. backs an early release proposal to retroactively correct sentence disparities between crack and powder cocaine offenders. The plan, which would apply to 5,500 prisoners, would take effect Nov. 1.**

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Reporting from Washington and Los Angeles

Thousands of federal prisoners could have an average of three years shaved off their prison terms to correct wide disparities in sentences between crack and powder cocaine offenders, under a proposal supported by Atty. Gen. Eric H. Holder Jr.

More than 12,000 federal prisoners — nearly 6% of the inmates in the badly overcrowded U.S. prison system — could be affected. But Holder recommended Wednesday that the early release be applied to only 5,500 prisoners, whose crimes did not involve the use of weapons and who did not have long criminal histories. The releases could begin later this year.

The proposal is intended to remedy a legacy of the war on drugs that meted out much harsher sentences to crack cocaine users, who are mostly black, than to powder cocaine users, often white and sometimes affluent. Congress changed the sentencing law last year but did not address the fate of thousands of prisoners already sentenced under the old system or arrested just before the law was changed.

The proposal under consideration by the U.S. Sentencing Commission comes after a divided Supreme Court ordered California to reduce its prison population by more than 30,000 inmates. It drew immediate fire from some prominent conservatives.

Rep. Lamar Smith (R-Texas), chairman of the House Judiciary Committee, said he was "disappointed by the Obama administration's position" on early releases for drug offenders and indicated he might push Congress to intervene if the U.S. Sentencing Commission votes to make the changes this month that would take effect Nov. 1. "It shows they are more concerned with the well-being of criminals than with the safety of our communities."

Sen. Charles E. Grassley (R-Iowa), the ranking member of the Senate Judiciary Committee, said it was a "bad idea" and that "I strongly disagree" with Holder's recommendations.

But blocking the move would be an uphill battle. To stop the sentence reductions, opponents would have to introduce a bill rejecting the early releases and the House and Senate would have to pass that legislation and send it to the White House for President Obama's signature — an

unlikely sequence. Smith was the only lawmaker to speak against the change in the law last year.

"I would be extremely surprised if Congress got worked up about this," said Marc Mauer, executive director of the Sentencing Project, a Washington group that pushes for reform in sentencing laws. "The law that was passed last year had strong bipartisan support and it's within the commission's authority to make sentencing guideline changes retroactive."

The number of prisoners who stand to benefit in California is relatively small, fewer than 300, because prosecutors have targeted drug gangs rather than individual dealers.

In testimony before the commission, Holder said his years as a federal prosecutor, federal judge and, now, the country's top law enforcement officer "compelled" him to seek equity between an offender convicted in a crack case and someone serving a shorter term for powder cocaine.

"There is simply no just or logical reason why their punishments should be dramatically more severe than those of other cocaine offenders," Holder said.

The six-member commission, presidential appointees comprising federal judges, lawyers and academics, are expected to vote later this month on amending the Fair Sentencing Act to grant the reprieves retroactively.

The commission has received 37,000 letters and emails on the subject, the majority of them from prisoners and their families who support early releases and equity between crack and powder cocaine offenders.

Mauer, who also testified at Wednesday's commission hearing, said the average crack offender would see a reduction of 37 months in his sentence.

The relief is justified, he said, because there is "no meaningful pharmacological difference between the two drugs" and "large percentages" of low-level crack dealers are serving long sentences designed for serious traffickers.

He added that the crack versus powder cocaine disparity particularly affects African Americans, who account for 82% of those convicted for federal crack offenses.

"For many African Americans," Mauer said, "this fundamental unfairness has undermined the legitimacy of the criminal justice system."

If the amendments are approved and become effective Nov. 1, prisoners or their attorneys can petition their sentencing judges for an early release, commission officials said. Or the judge or the director of the Bureau of Prisons could act unilaterally.

In the past, some judges have readily agreed to lower prison terms in response to changes in the sentencing guidelines. Others have been reluctant to do so.

"This process will be coordinated among the courts, probation offices, U.S. attorneys offices and the federal public defenders service," said Jeanne Doherty, a commission spokeswoman.

The harsh punishments for crack cocaine were rooted in the mid-1980s, when the epidemic of crack cocaine swept through major cities. Legislation was rushed through Congress in the weeks before the 1986 election and resulted in a series of penalties that has haunted judges, lawyers, prison wardens and untold families since.

Without time to study the issue, Congress wrote into law specific penalties for different versions of the same drug. Someone caught with 500 grams of powder cocaine or 5 grams of crack cocaine would get five years in prison. Possession of 5,000 grams of powder cocaine called for a mandatory 10-year term. The same was true for 50 grams of crack cocaine.

This 100-to-1 ratio based on the weight of powder and crack cocaine was adopted in the U.S. sentencing guidelines, and it has been used for deciding prison terms for more than 91,000 inmates since.

After years of growing criticism, Congress voted last year to change the ratio to 18 to 1. The law called for less severe prison terms for newly convicted defendants. However, it did not say what should happen to those already sentenced to long terms under the now-repealed ratio, and left it open for the commission to make available retroactive reductions.

In the Central District of California, which covers Los Angeles and six other counties, 138 prisoners would be eligible for relief.

Thom Mrozek, a spokesman for the U.S. attorney's office in Los Angeles, said that although each of the 94 federal prosecution offices nationwide had its own guidelines about what cases to bring, "in the area of narcotics, we like to focus our resources on drug trafficking organizations as opposed to a guy selling a rock."

California state prisoners serving time for cocaine offenses won't be affected by federal sentencing reductions and disparities in the state system are fewer.

Carl Gunn of the federal public defender's office in Los Angeles said the proposed federal sentence reductions were a step in the right direction but that they did not go far enough to correct the injustice of a law that so severely punishes users of one form of the drug and not others.

"There are still a lot of people out there suffering the ill effects of a horribly unjust law," he said of the thousands of other federal prisoners sentenced to mandatory minimums that cannot be lifted by the sentencing commission.