

RESOLUTION 11-06-2002

DIGEST

Sentencing: Possession of Cocaine Base for Sale

Amends Health and Safety Code section 11351.5 to lower the punishment for possession of cocaine base for sale.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

Reasons:

This resolution amends Health and Safety Code section 11351.5 to lower the punishment for possession of cocaine base for sale. This resolution should be disapproved because there are legitimate reasons to treat possession of cocaine base for sale differently than possession of processed cocaine for sale.

According to a recent Justice Department study, crack is more psychologically addictive and more closely related with violence than powder cocaine. Because it is smoked, crack cocaine effects are felt more quickly and more intensely than those of powder cocaine. However, the effects of smoked crack are shorter lived than the effects of snorted powder cocaine. Thus, users of crack need to use the drug more frequently, building up greater tolerances and a corresponding need for greater amounts of crack each time they use. Additionally, because crack can easily be broken down and packaged into very small and inexpensive quantities for distribution, it is more readily available to lower-income segments of the population. Crack is more likely to be sold on the streets and used in crack houses, contributing to the deterioration of neighborhoods and communities.

Unlike the disparity in sentencing found in the federal system, the difference between the possible California sentences for possession of crack for sale and possession of powder cocaine for sale is not disproportionate. That potential disparity in sentencing is also lessened by the discretion vested in the sentencing judge to give three, four or five years for crack, or two, three or four years for powder cocaine, based on the circumstances of the crime, including the amount of the drug and the defendant's prior record.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Health & Safety Code Section 11351.5 to read as follows:

- 1 §11351.5
- 2 Except as otherwise provided in this division, every person who possesses for sale or
- 3 purchases for purposes of sale cocaine base which is specified in paragraph (1) of
- 4 subdivision (f) of Section 11054, shall be punished by imprisonment in the state prison for a
- 5 period of ~~three, four or five~~ two, three or four years.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Proscribes punishment for possession for purpose of sale of cocaine base as 3, 4, or 5 years in state prison.

This Resolution: The resolution will alter the punishment for possession for sale of cocaine base to 2, 3 or 4 years in state prison.

The Problem: Whatever reason may have existed in the past for punishing possessors for the purpose of sale of cocaine base (aka "crack") and cocaine salt (aka "powder") differently, they have become obscure in the mists of time and the War on Drugs. Cocaine is cocaine, and a serious problem no matter what form it takes. What the statute as currently written does, effectively, is punish the poor (who are more likely traffickers in crack cocaine) more than the middle- and upper-class sellers of powdered cocaine.

As the United States District Court for the Northern District of Georgia opined, "So far as this court can determine, there is no rational basis for having heightened penalties for cocaine or cocaine base derived only by one means of manufacture, when it is clear beyond doubt that all forms of cocaine are equally smokable and, therefore, equally dangerous and where it appears that several forms of cocaine have in fact been abused in this country. *U.S. v. Davis*, 864 F.Supp. 1303, 1309 (N.D.Ga.,1994).

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

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