Crack Down: Remove Cocaine Sentencing Disparity

By “Coach Vance” Trefethen

***Resolved: The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction***

This case removes the 18-1 sentencing disparity between “crack” cocaine and powder cocaine by passing the EQUAL Act, a bill currently pending in Congress but not enacted. In the status quo, possession of crack cocaine is punished with the same sentence as for 18 times larger quantity of powder cocaine. Plan makes the sentences equal for the same quantity (by reducing the crack sentences) and allows retroactive sentence reductions for prisoners already serving time under the old

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Crack Down: Remove Crack Cocaine Sentencing Disparity

Some forms of injustice are pretty easy to recognize. The Status Quo 18-to-1 sentencing disparity between crack cocaine and powder cocaine is a no-brainer, and even someone high on drugs could see it. That’s why sober-minded debaters like my partner and me are urging fair-minded judges like you to join us in affirming that: The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction.

OBSERVATION 1. DEFINITIONS

“Crack”

*Dr. Charles P. Davis 2021 (MD, PhD) last reviewed 29 March 2021 “*Medical Definition of Crack (drug)“ (accessed 28 July 2021) <https://www.booker.senate.gov/imo/media/doc/EQUAL%20Act.pdf> (accessed 28 July 2021)

[Crack](https://www.medicinenet.com/cocaine_and_crack_abuse/article.htm) (drug): The street name given to [cocaine](https://www.medicinenet.com/cocaine_and_crack_abuse/article.htm) that has been processed from cocaine hydrochloride to a ready-to-use free base for [smoking](https://www.medicinenet.com/smoking_and_quitting_smoking/article.htm). Rather than requiring the more volatile method of processing cocaine using ether, crack cocaine is processed with ammonia or [sodium bicarbonate](https://www.medicinenet.com/sodium_bicarbonate-oral/article.htm) (baking soda) and water and heated to remove the hydrochloride, thus producing a form of cocaine that can be smoked. The term "crack" refers to the crackling sound heard when the mixture is heated, presumably from the sodium bicarbonate. On the illicit market, crack, or "rock," is sold in small, inexpensive dosage units. [Smoking](https://www.medicinenet.com/smoking_effects_pictures_slideshow/article.htm) this form of the drug delivers large quantities of cocaine to the [lungs](https://www.medicinenet.com/image-collection/lungs_picture/picture.htm), producing effects comparable to intravenous injection. These effects are felt almost immediately after [smoking](https://www.medicinenet.com/smoking_quiz/quiz.htm), are very intense, and do not last long.

The EQUAL Act. It’s a bill currently pending but not yet enacted by Congress

Sen. Cory Booker 2021 (D-NJ; author of the EQUAL bill) “Booker and Durbin Announce Legislation To Eliminate Federal Crack and Powder Cocaine Sentencing Disparity” 27 Jan 2021 <https://www.booker.senate.gov/news/press/booker-and-durbin-announce-legislation-to-eliminate-federal-crack-and-powder-cocaine-sentencing-disparity> (accessed 28 July 2021)

The *Eliminating a Quantifiably Unjust Application of the Law* (*EQUAL*)*Act* would eliminate the crack and powder cocaine sentencing disparity and ensure that those who were convicted or sentenced for a federal offense involving cocaine can receive a re-sentencing under the new law.

OBSERVATION 2. INHERENCY, or the structure of the Status Quo. Two key FACTS.

FACT 1. Eighteen to one disparity. The 18 to 1 federal sentencing disparity between crack and powder cocaine

Sen. Cory Booker 2021 (D-NJ) “Booker and Durbin Announce Legislation To Eliminate Federal Crack and Powder Cocaine Sentencing Disparity” 27 Jan 2021 <https://www.booker.senate.gov/news/press/booker-and-durbin-announce-legislation-to-eliminate-federal-crack-and-powder-cocaine-sentencing-disparity> (accessed 28 July 2021)

After the passage of the Anti-Drug Abuse Act of 1986, sentencing for crack and powder cocaine offenses vastly differed. For instance, until 2010, someone caught distributing 5 grams of crack cocaine served the same 5-year prison sentence as someone caught distributing 500 grams of powder cocaine. Over the years, this 100:1 sentencing disparity has been widely criticized as lacking scientific justification. Furthermore, the crack and powder cocaine sentencing disparity has disproportionately impacted people of color.  The *Fair Sentencing Act*, introduced by Senator Durbin, passed in 2010 during the Obama administration and reduced the sentencing disparity from 100:1 to 18:1.

FACT 2. The EQUAL Act would eliminate the disparity

US Justice Department statement before the Senate Judiciary Committee 2021. STATEMENT OF THE U.S. DEPARTMENT OF JUSTICE BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE FOR A HEARING ENTITLED EXAMIING FEDERAL SENTENCING FOR CRACK AND POWDER COCAINE PRESENTED, 22 JUNE 2021 <http://cdn.cnn.com/cnn/2021/images/06/22/equal.act.testimony-.final.pdf?eType=EmailBlastContent&eId=2f6d6aaa-bdde-4c06-9fc4-5c0c230f1631> (accessed 28 July 2021)

The Department urges this Committee and the Congress as a whole to pass the EQUAL Act and to send it to President Biden for his signature. The disparity in federal cocaine sentencing policy has been the most visible symbol of racial unfairness in the federal criminal justice system for almost 35 years, and it is time to eliminate it.

OBSERVATION 3. The Plan, implemented by Congress and the President

1. Congress passes the EQUAL Act. Its mandates are 1) Reduce the sentence for future convictions involving crack cocaine to equality with powder cocaine. 2) Allow retroactive reduction of sentences for federal prisoners already convicted of cocaine offenses before this plan was enacted.

2. Any laws in conflict with the plan are amended or superseded.

3. Funding from General Federal Revenues.

4. Plan takes effect 30 days after an Affirmative ballot

5. All Affirmative speeches may clarify.

OBSERVATION 4. The ADVANTAGES

ADVANTAGE 1. Reduced Racism

A. The Problem: The crack sentencing disparity promotes harmful racism in the justice system

Amy Fettig 2021. (human rights lawyer; Master’s from Columbia Univ. School of International & Public Affairs; J.D. from Georgetown Univ.; Executive Director, Sentencing Project) 20 July 2021 Letter Supporting the Passage of the Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act “https://www.sentencingproject.org/publications/letter-supporting-the-passage-of-the-eliminating-a-quantifiably-unjust-application-of-the-law-equal-act/?eType=EmailBlastContent&eId=2f6d6aaa-bdde-4c06-9fc4-5c0c230f1631

As the House Judiciary Committee prepares to mark up the Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act tomorrow, I write to express The Sentencing Project’s support for this bipartisan sentencing reform bill that would finally eliminate the federal sentencing disparity between crack and powdered cocaine offenses. This issue has a long legacy that exemplifies for many Americans the worst extremes of the 50-year-old War on Drugs and the racial injustice associated with federal mandatory minimums for drug offenses. Tomorrow’s markup comes almost 35 years after the passage of the Anti-Drug Abuse Act of 1986, which imposed the same harsh penalties for one amount of crack cocaine and 100 times the same amount of powder cocaine. At the time of the Anti-Drug Abuse Act’s passage, proponents of the law claimed the 100:1 sentencing disparity was necessary due to the allegedly “extra addictive” nature of crack. However, scientific research and decades of experience now make clear that the political hysteria surrounding crack cocaine was not only unwarranted but devastatingly harmful for Black communities.

Prof. Elizabeth Hinton, LeShae Henderson & Cindy Reed 2018. (Hinton - Assistant Professor, Department of History and Department of African and African American Studies, Harvard University. Henderson - Special Assistant, Research, Vera Institute of Justice. Reed - Senior Editor, Vera Institute of Justice) May 2018 “An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System“ <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf> (accessed 29 July 2021)

The federal government—and many states—enacted mandatory minimums that called for longer sentences for crack cocaine offenses—a drug more heavily used among black people—over powder cocaine—a drug more commonly used among white people. Combined, these drug laws contributed to substantial growth in the number of black people behind bars and the extreme racial disparities that characterize jails and prisons across the United States today.

C. The Solution: EQUAL Act solves the racial unfairness of cocaine sentencing disparity

US Justice Department statement before the Senate Judiciary Committee 2021. STATEMENT OF THE U.S. DEPARTMENT OF JUSTICE BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE FOR A HEARING ENTITLED EXAMIING FEDERAL SENTENCING FOR CRACK AND POWDER COCAINE PRESENTED, 22 JUNE 2021 <http://cdn.cnn.com/cnn/2021/images/06/22/equal.act.testimony-.final.pdf?eType=EmailBlastContent&eId=2f6d6aaa-bdde-4c06-9fc4-5c0c230f1631> (accessed 28 July 2021)

The Department urges this Committee and the Congress as a whole to pass the EQUAL Act and to send it to President Biden for his signature. The disparity in federal cocaine sentencing policy has been the most visible symbol of racial unfairness in the federal criminal justice system for almost 35 years, and it is time to eliminate it.

ADVANTAGE 2. Net benefits to taxpayers

Cocaine sentencing disparity has zero benefit, and eliminating it would save taxpayer money

Jeremiah Mosteller 2021. (J.D.; Senior Policy Analyst for criminal justice at Americans for Prosperity) 7 July 2021 “This criminal justice solution was well-intentioned. It still failed.” <https://americansforprosperity.org/sentencing-disparity-between-crack-powder-cocaine/> (accessed 29 July 2021)

There are inherent differences in some drugs that justify Congress imposing more or less severe sentences when individuals violate federal law. This is particularly justified when such action can positively impact public safety or public health. The disparity between crack and powder cocaine is not an example of such an instance. **The research shows that this sentencing disparity has done nothing to reduce recidivism, improve public safety, or reduce drug use — but it does**[disproportionately harm](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Crack_Cocaine_FY20.pdf)**certain communities**. A recent analysis of a potential policy change to end this disparity shows that it could save American taxpayers up to $117 million and further reduce the federal prison population by another 500 individuals. Ending this disparity will be both smart on crime and soft on taxpayers.

ADVANTAGE 3. Law enforcement effectiveness

A. The Link: Cocaine disparity undermines confidence and reduces cooperation and respect for the criminal justice system

US Justice Department statement before the Senate Judiciary Committee 2021. STATEMENT OF THE U.S. DEPARTMENT OF JUSTICE BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE FOR A HEARING ENTITLED EXAMIING FEDERAL SENTENCING FOR CRACK AND POWDER COCAINE PRESENTED, 22 JUNE 2021 <http://cdn.cnn.com/cnn/2021/images/06/22/equal.act.testimony-.final.pdf?eType=EmailBlastContent&eId=2f6d6aaa-bdde-4c06-9fc4-5c0c230f1631> (accessed 28 July 2021)

Public trust and confidence are necessary elements of an effective criminal justice system – our laws and their enforcement must be fair and perceived as fair. Unfairness, or the perception of unfairness, undermines governmental authority in the criminal justice process. It leads victims and witnesses of crime to think twice before cooperating with law enforcement, tempts jurors to ignore the law and facts when judging a criminal case, and draws the public into questioning the motives of governmental officials and whether racism is at the heart of governmental systems. When 77.1% of crack convictions in 2020 impact only members of a particular race or ethnicity—in this case Black people, who are thus disproportionally subject to the persisting sentencing disparity—that racial disparity greatly undermines fairness.

B. The Impact: Public safety. Cooperation brings increased public safety and better crime fighting capabilities

US Dept of Justice 2015. “Importance of Police-Community Relationships and Resources for Further Reading” <https://www.justice.gov/crs/file/836486/download> (accessed 1 Aug 2021) (article is undated but references current events in July 2015)

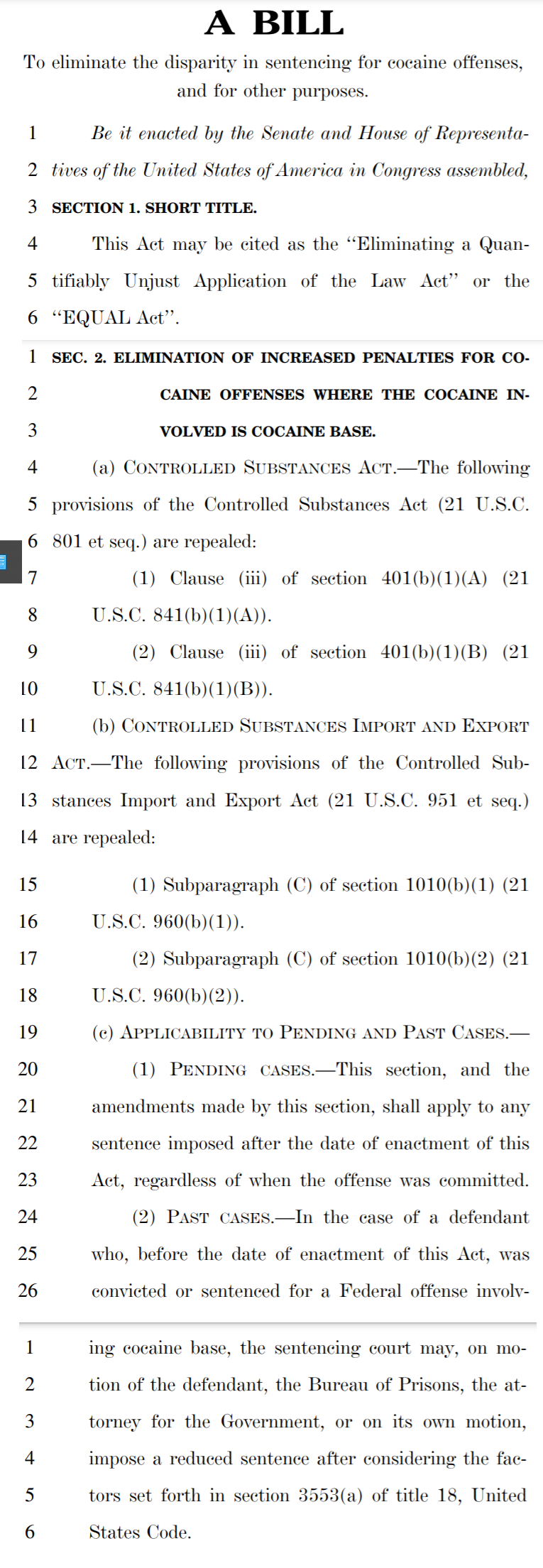
Strong relationships of mutual trust between police agencies and the communities they serve are critical to maintaining public safety and effective policing. Police officials rely on the cooperation of community members to provide information about crime in their neighborhoods, and to work with the police to devise solutions to crime and disorder problems. Similarly community members’ willingness to trust the police depends on whether they believe that police actions reflect community values and incorporate the principles of procedural justice and legitimacy.

2A Evidence: Cocaine Sentencing

DEFINITIONS & BACKGROUND

Text of the EQUAL Act

Sen. Cory Booker 2021 (D-NJ) Text of the “EQUAL Act” bill (accessed 28 July 2021) https://www.booker.senate.gov/imo/media/doc/EQUAL%20Act.pdf



INHERENCY

Supreme Court can’t fix sentencing disparity for low-level offenders

Brian Taylor 2021 (journalist with NPR) 4 May 2021 “Supreme Court Weighs Crack Cocaine Sentencing Disparity” <https://www.npr.org/2021/05/04/993518328/supreme-court-weighs-crack-cocaine-sentencing-disparity> (ellipses in original) (accessed 28 July 2021)

In 2010, Congress and the Obama administration amended the law to reduce the sentencing disparities between the two forms of cocaine to 18-to-1, and in 2018, lawmakers and the Trump administration made the change retroactive, affecting those still serving time under the original statute. But Congress left out sentences for low levels of crack from the retroactive provision, and justices across the ideological spectrum indicated Tuesday they were skeptical that the court could change that. "I think they were much too high," said Justice Stephen Breyer, one of the court's more liberal members, of the tough sentences for crack cocaine possession. "I understand that, but I can't get away from this statute." Justice Brett Kavanaugh wondered: "Why didn't Congress just say everyone who's been sentenced for crack offenses ... is eligible for resentencing, something simple like that?" The plaintiff in the case, Tarahrick Terry, a Black man from Florida, was sentenced in 2008 to 15 1/2 years in prison for possession of less than 4 grams of crack, about $50 worth, his attorney estimated.

First Step Act doesn’t solve excessive sentences for low-level offenders. Supreme Court said: Doesn’t apply.

Ariane de Vogue 2021 (journalist) CNN “Trump-era sentencing reform law doesn't apply to low-level crack cocaine offenders, Supreme Court says” https://www.cnn.com/2021/06/14/politics/supreme-court-first-step-act-crack-cocaine-conviction-case/index.html(accessed 3 Aug 2021)

The Supreme Court [held Monday](https://www.supremecourt.gov/opinions/20pdf/20-5904_i4dk.pdf) that a low-level crack-cocaine offender is ineligible to seek a reduced sentence under the [Trump-era First Step Act sentencing reform](https://www.cnn.com/2019/07/19/politics/first-step-act-prisoners-released-doj/index.html)law. The vote was 9-0. At issue in the case is whether low-level crack-cocaine offenders who were convicted before Congress changed sentencing guidelines in 2010 are eligible for lower sentences under a sentencing reform law passed in 2018. Under federal law there is a three-tier sentencing structure for cocaine offenses. Tiers "1" and "2" concern convictions for large and medium amounts of cocaine, while Tier "3" is reserved for low-level offenders. In 2010 Congress increased the amount of crack quantities required for the two higher tiers out of concern for disparities between sentences for powder and crack cocaine and allegations that the sentences reflected race-based differences. In 2018, lawmakers passed the landmark, bipartisan First Step Act, making changes retroactive for crimes committed before 2010.

A/T “Bill pending in Congress” – No one knows whether it will pass, multiple hurdles remain

Gabby Birenbaum 2021 (journalist) 19 Mar 2021 “The EQUAL Act would finally close the cocaine sentencing disparity” <https://www.vox.com/2021/3/19/22336224/equal-act-cocaine-sentencing-disparity-war-on-drugs> (accessed 3 Aug 2021)

Sen. Chuck Grassley, who worked with Durbin to introduce and shepherd the First Step Act through the Senate, would be a critical part of any bipartisan negotiation. In a statement to Vox, a spokesperson for Grassley said he was receptive to working with Democrats on the EQUAL Act, but that that process had not begun yet. “Sen. Grassley would certainly be open to reviewing and discussing it with his colleagues, and wouldn’t rule out support at this point,” his spokesperson said. “But that review and discussion just hasn’t happened yet.” Multiple other Republican senators who supported the First Step Act did not respond to requests for comment. Still, with former president Donald Trump, who often professed [inconsistent views](https://www.politico.com/interactives/2020/justice-reform-biden-trump-candidate-policy-positions/) on criminal justice reform, out of the way, advocates think the time is ripe for reforming sentencing and other aspects of the justice system— and that the EQUAL Act will be a good barometer of their belief. “This is a good, rightful shot to see what this Congress’s appetite is for reform,” Ring said. “It will be interesting to see if dynamics have changed.”

HARMS / SIGNIFICANCE

Racial injustice: 81% of crack convicted offenders are Black, but non-Blacks are >66% of crack users

Amy Fettig 2021. (human rights lawyer; Master’s from Columbia Univ. School of International & Public Affairs; J.D. from Georgetown Univ.; Executive Director, Sentencing Project) 20 July 2021 Letter Supporting the Passage of the Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act “https://www.sentencingproject.org/publications/letter-supporting-the-passage-of-the-eliminating-a-quantifiably-unjust-application-of-the-law-equal-act/?eType=EmailBlastContent&eId=2f6d6aaa-bdde-4c06-9fc4-5c0c230f1631 (accessed 29 July 2021)

Meanwhile, the disproportionate sentences for crack cocaine have played a lead role in exemplifying racial injustice in our criminal legal system. In 2019, 81% of people convicted of crack cocaine offenses were Black, even though white and Latinx people have historically accounted for over 66% of crack cocaine users.

Sentencing disparity was unjust because there’s no real difference between crack and powder, and it has racist impact

Gabby Birenbaum 2021 (journalist) 19 Mar 2021 “The EQUAL Act would finally close the cocaine sentencing disparity” <https://www.vox.com/2021/3/19/22336224/equal-act-cocaine-sentencing-disparity-war-on-drugs> (accessed 3 Aug 2021)

The 1986 Anti-Drug Abuse Act was written based on Congress’s conviction that crack cocaine was more addictive than powder cocaine and incited violent behavior. But those fears proved to be misguided — the two forms are [nearly chemically identical](https://drugpolicy.org/sites/default/files/cocainefacts_august_2018_1.pdf?_ga=2.140274868.664161003.1615992807-290810535.1615838332); [studies](https://web.archive.org/web/20120229184659/http:/law.fordham.edu/assets/LawReview/Beaver_April_2010.pdf) have [consistently](https://www.ojp.gov/ncjrs/virtual-library/abstracts/contingent-call-pipe-binging-and-addiction-among-heavy-cocaine) [found](https://www.ussc.gov/research/congressional-reports/2002-report-congress-federal-cocaine-sentencing-policy) that crack is no more addictive than powder cocaine, and there is little scientific basis for linking violent crime with crack. The biggest difference between the two forms is that crack is far less expensive than powder cocaine, meaning those involved in its trade were low-level dealers and users being punished as if they were kingpins. In 2009, one year before the Fair Sentencing Act, the [US Sentencing Commission found](https://www.usnews.com/news/articles/2010/08/03/data-show-racial-disparity-in-crack-sentencing) that 79 percent of convicted crack offenders were Black. “It exemplified racial injustice in the system,” said Kara Gotsch, deputy director of The Sentencing Project. “The 100 to 1 system epitomized everything wrong with the criminal justice system, and the racism and bias involved in it.”

Cocaine disparity causes community distrust of the police

US Dept of Justice 2015. “Importance of Police-Community Relationships and Resources for Further Reading” <https://www.justice.gov/crs/file/836486/download> (accessed 1 Aug 2021) (article is undated but references current events in July 2015)

Civil rights leaders at the PERF meeting in 2015 said that while it is true that many police officers were not even born then and thus cannot be held responsible for enforcing Jim Crow laws, all police officers should be aware of this history and should be responsible to it, meaning that police must understand that this history is legitimately a part of some people’s feelings about the police. And looking at more recent history, police must understand that the mistrust of police by some community members is also rooted in issues such as racial disparities resulting from laws that require sharply greater penalties for crack cocaine violations as opposed to powder cocaine.

ADVOCACY / SOLVENCY

EQUAL Act creates fairer justice system. Just like majority of States, who don’t punish crack and powder differently

Amy Fettig 2021. (human rights lawyer; Master’s from Columbia Univ. School of International & Public Affairs; J.D. from Georgetown Univ.; Executive Director, Sentencing Project) 20 July 2021 Letter Supporting the Passage of the Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act “https://www.sentencingproject.org/publications/letter-supporting-the-passage-of-the-eliminating-a-quantifiably-unjust-application-of-the-law-equal-act/?eType=EmailBlastContent&eId=2f6d6aaa-bdde-4c06-9fc4-5c0c230f1631 (accessed 29 July 2021)

The EQUAL Act offers an opportunity to create a more proportionate, fair, and equitable criminal justice system by entirely eliminating the sentencing disparity between crack and powder cocaine, and applying these reforms retroactively. The bill would bring the federal justice system more in line with the vast majority of states that do not punish crack and powder cocaine differently.

EQUAL Act would be most impactful by correcting the racist legacy on current prisoners

Gabby Birenbaum 2021 (journalist) 19 Mar 2021 “The EQUAL Act would finally close the cocaine sentencing disparity” <https://www.vox.com/2021/3/19/22336224/equal-act-cocaine-sentencing-disparity-war-on-drugs> (accessed 3 Aug 2021)

Arrests for cocaine-related offenses have fallen dramatically from their peak around 1990, according to [data from Asbury Park Press](https://www.app.com/in-depth/news/local/public-safety/2019/12/02/crack-heroin-race-arrests-blacks-whites/2524961002/), so the law would be most impactful as a means of correcting the disparity’s legacy of racism for people still serving sentences for crack.

Justice Dept., Sentencing Commission, former DEA Administrator Hutchinson, lots of bipartisan legislators advocate Plan

US Justice Department statement before the Senate Judiciary Committee 2021. STATEMENT OF THE U.S. DEPARTMENT OF JUSTICE BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE FOR A HEARING ENTITLED EXAMIING FEDERAL SENTENCING FOR CRACK AND POWDER COCAINE PRESENTED, 22 JUNE 2021 <http://cdn.cnn.com/cnn/2021/images/06/22/equal.act.testimony-.final.pdf?eType=EmailBlastContent&eId=2f6d6aaa-bdde-4c06-9fc4-5c0c230f1631> (accessed 28 July 2021)

The U.S. Sentencing Commission brought this issue to the attention of the country in 1995, when it issued the first of several reports laying out in great detail the research around cocaine, its forms, routes of administration and effects, the marketing and distribution of cocaine and its public health issues, and the crime associated with cocaine trafficking. The Commission’s data revealed for the first time that African-Americans accounted for 88 percent of federal crack cocaine distribution convictions in 1993, and that the sentences of those convicted of crack cocaine offenses were far more severe than for those traffickers involved in similar quantities of powder cocaine. After careful and comprehensive study of the issue, the Commission concluded that sentences for all forms of cocaine trafficking needed to be strong to address the genuine harms caused by such trafficking, but that the disparate treatment of crack and powder cocaine in federal sentencing policy was not justified. In April of 1995, the Commission recommended that the disparity be eliminated. The Department believes it is long past time to accept the Commission’s 1995 recommendation. There have been important steps taken in the intervening years to reduce the disparity, but a disparity remains. As Arkansas Governor, former Congressman, and former Administrator of the Drug Enforcement Administration Asa Hutchinson recently wrote in an opinion piece, there is no worthier cause than preserving our country’s founding principle: that all are treated equally under the law. Governor Hutchinson urged passage of the EQUAL Act to end what he called “an old wrong.” The EQUAL Act has been endorsed by Democrats and Republicans, conservatives and liberals, senators and representatives. These legislators know that our justice system must have the trust and confidence of the American people to be effective. And a prerequisite for that is for our criminal and sentencing laws to be predictable, fair, effective, and not result in unwarranted racial and ethnic disparities.

ADVANTAGES

A/T “Prison population declining” – Biden is reversing the trend. Now it’s increasing again

Samantha Michaels 2021 (journalist) 21 July 2021 “Biden Said He’d Cut Incarceration in Half. So Far, the Federal Prison Population Is Growing.” <https://www.motherjones.com/crime-justice/2021/07/biden-said-hed-cut-incarceration-in-half-so-far-the-federal-prison-population-is-growing/> (accessed 22 July 2021)

During his campaign, President Joe Biden pledged repeatedly to reduce the country’s prison population, which, because of racist policing and sentencing laws, is disproportionately composed of people of color. At one point, he said his administration could cut the number of incarcerated people by [more than half](https://www.buzzfeednews.com/article/katherinemiller/joe-biden-incarceration-prison-population-cut-aclu), largely by investing in alternatives to prisons. Later he said he didn’t want to be bound by a percentage, but he reiterated that he hoped to drastically lower the number of people locked up. But six months into his term, those promises are ringing hollow. The number of people in federal prisons [is growing](https://sentencing.typepad.com/sentencing_law_and_policy/2021/07/federal-prison-population-starting-to-grow-again-as-we-approach-six-months-into-biden-administration.html). And Biden’s legal team recently announced that thousands of people who were released early from federal prisons last year to slow the spread of the coronavirus could be forced to return again after the pandemic ends.

Justice Dept. says: Eliminate the cocaine disparity to solve the racial bias

Reuters news service 2021. (journalist Sara Lynch) “U.S. Justice Department backs bill to end disparities in crack cocaine sentences“ 22 June 2021 https://www.reuters.com/world/us/us-justice-department-backs-bill-end-disparities-crack-cocaine-sentences-2021-06-22/ (accessed 3 Aug 2021)

President Joe Biden's Justice Department is urging Congress to pass legislation to permanently end the sentencing disparities between crack cocaine and powder, a policy that has led to the disproportionate incarceration of African Americans across the United States. In written testimony submitted to the Senate Judiciary Committee, the Justice Department lambasted the "unwarranted racial disparities" that have resulted from the differences in how drug offenses involving crack and powder cocaine are treated under current law, and said the misguided policy was "based on misinformation about the pharmacology of cocaine and its effects."

DISADVANTAGE RESPONSES

Don’t need special quantity-based penalties to go after serious drug offenders

US Justice Department statement before the Senate Judiciary Committee 2021. STATEMENT OF THE U.S. DEPARTMENT OF JUSTICE BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE FOR A HEARING ENTITLED EXAMIING FEDERAL SENTENCING FOR CRACK AND POWDER COCAINE PRESENTED, 22 JUNE 2021 <http://cdn.cnn.com/cnn/2021/images/06/22/equal.act.testimony-.final.pdf?eType=EmailBlastContent&eId=2f6d6aaa-bdde-4c06-9fc4-5c0c230f1631> (accessed 28 July 2021)

Some forms of drug trafficking may correlate with higher rates of accompanying weapon possession, violence, or other aggravating factors. And we believe that those differences are often significant enough that they should be accounted for in sentencing policy. But those differences (unlike differences inherent in the drug’s pharmacology) can be addressed through statutes and guidelines targeting violence, weapons, culpability level, and the like, rather than through quantity-based penalties. This allows for targeting longer prison sentences for offenders whose conduct warrants them, and mitigated sentences for those that do not, rather than being over-inclusive and sweeping in those for whom such sentences are unnecessary, unjust, and costly.

Cocaine disparity doesn’t reduce crime or drug abuse. All it does is promote racism

Gabby Birenbaum 2021 (journalist) 19 Mar 2021 “The EQUAL Act would finally close the cocaine sentencing disparity” <https://www.vox.com/2021/3/19/22336224/equal-act-cocaine-sentencing-disparity-war-on-drugs> (accessed 3 Aug 2021)

Over 25 years after the 1994 Crime Bill and 35 years after the Anti-Drug Abuse Act, the War on Drugs is considered by [experts](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjjif7-k7jvAhUQB50JHSKgAGkQFjAAegQIAhAD&url=https%3A%2F%2Fcivilrights.org%2Fedfund%2Fresource%2Fthe-war-on-drugs-has-failed-commission-says%2F&usg=AOvVaw2KNle6dMXLbh_tHGcrXer0) and [government officials](https://www.vox.com/policy-and-politics/2017/1/30/14346766/drug-war-failure-evolution) alike to be one of the biggest failures of American governance in the 20th century. Mandatory minimums, three-strike rules, and expanded felony classifications were [not responsible](https://www.brennancenter.org/our-work/analysis-opinion/complex-history-controversial-1994-crime-bill) for drops in the crime rate and [have not significantly reduced drug use](https://www.vox.com/2016/5/8/18089368/war-on-drugs-marijuana-cocaine-heroin-meth). Instead, these policies ushered in an era of mass incarceration, incited exorbitant federal cost, and have promoted wholly racist outcomes in which one of every three Black boys are expected to go to prison in their lifetimes, compared to just one in every 17 white boys, [according to research from the ACLU](https://www.aclu.org/issues/smart-justice/mass-incarceration). The cocaine sentencing disparity is one of the most notable and obvious manifestations of the racist impact of these laws.

18:1 disparity doesn’t help public safety or reduce drug abuse

Amy Fettig 2021. (human rights lawyer; Master’s from Columbia Univ. School of International & Public Affairs; J.D. from Georgetown Univ.; Executive Director, Sentencing Project) 20 July 2021 Letter Supporting the Passage of the Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act “https://www.sentencingproject.org/publications/letter-supporting-the-passage-of-the-eliminating-a-quantifiably-unjust-application-of-the-law-equal-act/?eType=EmailBlastContent&eId=2f6d6aaa-bdde-4c06-9fc4-5c0c230f1631 (accessed 29 July 2021)

Broad bipartisan consensus regarding the injustice of the 100:1 disparity, fortunately, led Congress to approve the Fair Sentencing Act of 2010 to reduce the disparity to 18:1, and the First Step Act of 2018 made this reform retroactive. However, the continued sentencing imbalance has maintained harsh mandatory minimums for low-level offending—primarily street-level selling—and done little to improve public safety or curb the use or sale of cocaine in the United States.

State level studies show: Removing crack disparity showed no trend of increased drug use or crime

Jeremiah Mosteller 2021. (J.D.; Senior Policy Analyst for criminal justice at Americans for Prosperity) 7 July 2021 “This criminal justice solution was well-intentioned. It still failed.” <https://americansforprosperity.org/sentencing-disparity-between-crack-powder-cocaine/> (accessed 29 July 2021)

More than [40 states](https://famm.org/wp-content/uploads/Crack-Disparity-in-the-States.pdf) either never had or have ended their crack-powder sentencing disparities. Data on [cocaine](https://www.samhsa.gov/data/report/2018-2019-nsduh-national-maps-prevalence-estimates-state) [use](https://www.samhsa.gov/data/sites/default/files/report_2736/ShortReport-2736.html) and [crime rates](https://crime-data-explorer.fr.cloud.gov/pages/explorer/crime/crime-trend) shows no apparent trend or difference among states that have a disparity and those that do not. It is now clear that America reached an inaccurate conclusion about the need for more severe punishments for crack cocaine and that **this disparity does nothing to advance our country’s public safety or public health goals**.

A/T “Special dangers of crack” – Crack is no more dangerous than powder cocaine, and less dangerous than alcohol

Jeremiah Mosteller 2021. (J.D.; Senior Policy Analyst for criminal justice at Americans for Prosperity) 7 July 2021 “This criminal justice solution was well-intentioned. It still failed.” <https://americansforprosperity.org/sentencing-disparity-between-crack-powder-cocaine/> (accessed 29 July 2021)

* The use of crack and powder cocaine [results](https://pubmed.ncbi.nlm.nih.gov/8918856/) in comparable “physiological and psychoactive effects” and are nearly chemically identical.  
  - There are surely many negative health outcomes associated with abusing certain substances, and we must be vigilant as a country about working to reduce such use. But research has [failed to show](https://www.sciencedirect.com/science/article/abs/pii/S0376871617304775) more negative health outcomes for users of crack cocaine when compared to other substances.  
  - Contrary to previous assumptions, there is [no difference](https://pubmed.ncbi.nlm.nih.gov/20560836/) in the violence associated with crack and powder cocaine use. In some [studies](https://pubmed.ncbi.nlm.nih.gov/29941239/), both forms of cocaine are associated with [less violence](https://journals.sagepub.com/doi/abs/10.1177/0887403407300177) than alcohol.