



The EQUAL Act: Why Congress Must #EndTheDisparity Between Federal Crack & Powder Cocaine Sentences

The Problem: In 1986, Congress passed the Anti-Drug Abuse Act, which created a disparity between federal penalties for crack cocaine and powder cocaine offenses. The law required the same harsh penalties for the possession of one amount of crack cocaine and 100 times the same amount of powder cocaine. Decades later, the Fair Sentencing Act of 2010 reduced that disparity from 100:1 to 18:1, and that reform was made retroactive in the First Step Act signed in 2018. Despite this reform, people continue to face longer sentences for offenses involving crack cocaine than for offenses involving the same amount of powder cocaine.

The Solution: On September 28, 2021, the U.S. House of Representatives approved the EQUAL Act by an overwhelming bipartisan vote of 361 to 66. The bill completely eliminates the disparity between the amount of crack cocaine and powder cocaine that triggers mandatory sentences. It also provides an opportunity for people who received mandatory minimums for crack offenses in the past to receive a fair sentence under the new law. The bill is supported by a broad coalition of law enforcement organizations, civil rights groups, taxpayer watchdogs, and criminal justice reform organizations.

There is no scientific justification for treating crack and powder cocaine differently

- The initial justifications for treating crack and powder cocaine differently, including the allegedly extra addictive nature of crack, have been proven false.¹
- Experts have found that there is no scientific basis for treating crack and powder cocaine differently, and that doing so undermines public trust in the criminal justice system.²

Public safety is not harmed by equalizing crack and powder sentencing

- Even if the EQUAL Act becomes law, the average sentence for those currently serving time for crack-related convictions would still be over eight years.³
- Research into past retroactive amendments to the Sentencing Guidelines shows that recidivism rates among people who received reduced sentences for crack cocaine offenses were similar to people who had served longer sentences.⁴

¹ See U.S. Sentencing Comm'n, Cocaine and Federal Sentencing Policy (May 2002), https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200205-rtc-cocaine-sentencing-policy/200205_Cocaine_and_Federal_Sentencing_Policy.pdf.

² See e.g. "Congress OKs Fair Sentencing Act," *UPI*, (July 20, 2010) https://www.upi.com/Top_News/US/2010/07/28/Congress-OKs-Fair-Sentencing-Act/22641280367802/?ur3=1; Editorial, "The Fair Sentencing Act of 2010: It's about time," *Los Angeles Times*, (July 31, 2010) <http://articles.latimes.com/2010/jul/31/opinion/la-ed-sentencing-20100731>.

³ See U.S. Sentencing Comm'n, Estimate of the Impact of H.R. 1693, The EQUAL Act of 2021 (January 2022), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/prison-and-sentencing-impact-assessments/January_2022_Impact_Analysis_for_CBO.pdf

⁴ U.S. Sentencing Comm'n, Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment, (May 2014), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/20190131_Revocations.pdf.

- Among people convicted of crack cocaine offenses in 2019, only 6.5% were found to have had a leadership or supervisory role in the offense.⁵
- The vast majority of states do not punish crack and powder cocaine differently, and many have moved to eliminate or reduce their disparities in recent years.⁶
- Passage of the EQUAL Act would save hundreds of millions of dollars, money that could be invested in people and programs that could reduce crime more effectively than locking up low-level crack offenders.

The crack-powder disparity fosters and entrenches racial inequality

- In 2019, 81% of people convicted of crack cocaine crimes were Black,⁷ even though white and Hispanic people have historically accounted for over 66% of crack users.⁸
- Before Congress established the crack-powder disparity in 1986, the average federal drug sentence for Black people was 11% higher than for whites. Just four years later, the average federal drug sentence for Black defendants was 49% higher.⁹
- The U.S. Sentencing Commission found that, in the case of crack cocaine penalties, “perceived improper racial disparity fosters disrespect for and lack of confidence in the criminal justice system.”¹⁰

Passing the EQUAL Act would reunite families sooner and protect taxpayers

- If enacted, the EQUAL Act would reduce sentences for people serving time for crack offenses by an average of just over six years. This change alone would cut a total of 46,500 years off sentences.¹¹
- For those convicted after the EQUAL Act passes, their average sentence will be reduced by 2.5 years. This change will reduce total sentences over the next ten years by 21,300 years.¹²
- By reducing unnecessary prison time by an estimated 67,800 years for people, 91 percent of whom are Black, the EQUAL Act will reunite thousands of families sooner and save hundreds of millions of taxpayer dollars in the first decade alone.

⁵ U.S. Sentencing Comm’n, Powder Cocaine Trafficking Offenses (FY19),

https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Crack_Cocaine_FY19.pdf.

⁶ See e.g., SB 1154, 118th Sess. (S.C. 2010); HB 86, §1, 129th Gen. Assem. (Ohio 2011); SB 1010, 2013-14 Reg. Sess. (Cal. 2014); SB 1005, 436th Gen. Assem. (Md. 2016).

⁷ U.S. Sentencing Comm’n, Powder Cocaine Trafficking Offenses (FY19),

https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Crack_Cocaine_FY19.pdf.

⁸ Palamar, Joseph J et al. “Powder cocaine and crack use in the United States: an examination of risk for arrest and socioeconomic disparities in use.” Drug and alcohol dependence vol. 149 (2015): 108-16.
doi:10.1016/j.drugalcdep.2015.01.029

⁹ Drug Policy Alliance, Race and the Drug War, <http://drugpolicy.org/communities/race/index.cfm?printpage=1>

¹⁰ U.S. Sentencing Comm’n, Cocaine and Federal Sentencing Policy (May 2002),

https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200205-rtc-cocaine-sentencing-policy/200205_Cocaine_and_Federal_Sentencing_Policy.pdf.

¹¹ See U.S. Sentencing Comm’n, Estimate of the Impact of H.R. 1693, The EQUAL Act of 2021 (January 2022),

https://www.ussc.gov/sites/default/files/pdf/research-and-publications/prison-and-sentencing-impact-assessments/January_2022_Impact_Analysis_for_CBO.pdf

¹² Id.