



July 21, 2021

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Jim Jordan
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Re: Markup on the EQUAL Act (H.R. 1693, S. 79)

Dear Chairman Nadler and Ranking Member Jordan:

We thank you for holding this important markup of the Eliminating a Quantifiably Unjust Application of the Law Act or “EQUAL Act” (H.R. 1693, S. 79), and we write today to urge the committee to pass the bill.

FAMM has opposed the crack-powder sentencing disparity since our founding in 1991. The EQUAL Act is a bipartisan bill that would eliminate this sentencing disparity and make that change retroactively applicable to those currently serving excessive sentences in federal prison. On behalf of the thousands of families and incarcerated people we represent nationwide who would have the opportunity to be reunited by this bill, we strongly urge you to pass it without amendments that would detract from its impact.

The crack-powder sentencing disparity was created in 1986 when Congress established mandatory minimum sentences for drug offenses. Crack and powder cocaine are chemically identical and produce similar effects on the human body. Nonetheless, Congress required the same mandatory sentences for people who had five grams of crack or 500 grams of powder cocaine. This 100:1 disparity was not based on scientific evidence, but on now-debunked beliefs that crack cocaine was more addictive and dangerous and associated with more violence.¹

The crack-powder disparity produced several unjustifiable sentencing disparities in the federal system. First, because of the small amounts of crack cocaine necessary to trigger mandatory minimum sentences, thousands of small-scale and street-level crack sellers received the same lengthy sentences Congress applied to higher-level, large-quantity powder cocaine traffickers. In 2016, 45% of people convicted of crack cocaine offenses were street-level dealers, compared to just 10.2% of powder cocaine convictions.² Congress intended mandatory minimum drug sentences for sharks, but they were applied to tens of thousands of minnows, wasting taxpayer money and public safety resources that could have been better invested elsewhere.

Second, the vast majority of people receiving these excessive crack sentences were (and still are) Black. Historically, 80 to 90 percent of those convicted of crack offenses were Black, despite the fact that crack usage is equal across racial groups.³ In Fiscal Year 2020, over 76% of drug



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trafficking defendants for crack cocaine offenses were Black.⁴ The crack-powder sentencing disparity both created and exacerbated racial disparities in sentencing. The perception and reality of this racial disparity undermines public safety by eroding trust in and respect for law enforcement and the justice system.

In 2010, Congress passed the Fair Sentencing Act, which reduced the 100:1 disparity to 18:1, based on a political compromise made in the U.S. Senate. Today, 28 grams of crack and 500 grams of powder cocaine carry five-year mandatory minimum sentences. This 18:1 disparity was finally made retroactive in the First Step Act of 2018. More than 3,700 people received sentence reductions and reunited with their families because of this landmark bipartisan reform.⁵

Changing the crack-powder disparity did not lead to a surge in crack usage. Usage rates of crack cocaine were unchanged following the creation of the 100:1 crack/powder disparity in 1986, and usage did not increase following the Fair Sentencing Act of 2010.⁶ In fact, 42 states have no disparity and treat crack and powder cocaine identically for sentencing purposes.⁷ The six states that have eliminated crack-powder sentencing disparities since 2005⁸ have since seen decreases in drug crime and arrests.⁹

Congress should eliminate the current 18:1 crack-powder disparity. It is just as unjustifiable as the 100:1 disparity. Thirty-five years of evidence and experience shows that *any* disparity is harmful and unwarranted. It is never too late to do the right thing.

The crack-powder disparity is unnecessary, counterproductive, and a stain on the American justice system. This disparity should be eliminated not just for people sentenced in the future, but for people still serving sentences based on the current disparity. Equity demands giving those already in prison the opportunity for a resentencing. Receiving a fair punishment should not depend on something as arbitrary as the day a person went to court.

Real lives are at stake. Matthew Charles was sentenced to 35 years in prison for a crack cocaine offense. If he had been sentenced for powder cocaine instead of crack, his sentence would have been 15 years. When the First Step Act made the 18:1 disparity retroactive, Matthew was the first to have his sentence reconsidered and reduced. He was released after serving 21 years behind bars. Matthew became a guest at the State of the Union address, where President Trump told Matthew's extraordinary story of finding faith and a new future in prison. Since his release, Matthew has volunteered for hundreds of hours in his community, established close relationships with his daughters, and become an advocate for the people he left behind in prison. There are many others like Matthew still in prison, still serving unfair sentences. Congress should repeal the crack-powder disparity and create a means to remedy those injustices.

We strongly urge you to support the EQUAL Act and thank you for your consideration of our views on this important piece of legislation.

Sincerely,

Kevin A. Ring
President

¹ Myriad studies have shown that violence associated with crack cocaine in the 1980's was caused by rapid expansion of drug markets and competition over previously unestablished territories. As markets stabilized in later decades, violence associated with crack cocaine trafficking plummeted. See Alfred Blumstein, *The Notorious 100:1 Crack: Powder Disparity—The Data Tell Us that It Is Time to Restore the Balance*, Federal Sentencing Reporter (October 2003), <http://graphics8.nytimes.com/images/blogs/freakonomics/pdf/BlumsteinFedSentencing.pdf>.

² USSC, *Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System* (Oct. 2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171025_Drug-Mand-Min.pdf.

³ Substance Abuse and Mental Health Services Administration, *Results from the 2018 National Survey on Drug Use and Health: Detailed Tables* (2019). <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHDetailedTabs2018R2/NSDUHDetailedTabs2018.pdf>.

⁴ U.S. Sentencing Commission, *Race of Drug Trafficking Offenders, Fiscal Year 2020*, <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2020/TableD2.pdf>.

⁵ U.S. Sentencing Commission, *First Step Act of 2018 Resentencing Provisions Retroactivity Data Report*, <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/first-step-act/20210519-First-Step-Act-Retro.pdf>.

⁶ Lauryn Saxe Walker & Briana Mezuk, *Mandatory Minimum Sentencing Policies and Cocaine Use in the U.S., 1985–2013*, National Institute of Health (November 29, 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6267913/>.

⁷ The exceptions are New Hampshire (28:1), Missouri (18.75:1), Arizona (12:1), Maine (3.5:1), Vermont and Iowa (2.5:1), Virginia (2:1), and North Dakota (1.8:1).

⁸ The states are Connecticut and Ohio (2005), South Carolina (2010), California (2014), Maryland (2016), and Oklahoma (2018).

⁹ FAMM, *The Crack & Powder Cocaine Disparity: Tackling Hard Questions*, <https://famm.org/wp-content/uploads/EQUAL-Act-Hard-Questions.pdf>.