



Ending the Disparity 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, imposing 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. While this was a step towards fairness, it still means that people face longer sentences for offenses involving crack cocaine than for offenses involving the same amount of powder cocaine – two forms of the same drug.

The Solution: Congress must finish the job that it started with the Fair Sentencing Act of 2010 and pass a law that completely eliminates the disparity between the amount of crack cocaine and powder cocaine that triggers federal mandatory sentences. This law must also provide an opportunity for people who received mandatory minimums for crack cocaine offenses in the past to receive a fair sentence under the new law.

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 false¹
- 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 system²

Public safety is not harmed by equalizing crack and powder sentencing

- 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 sentences³
- Among people convicted of crack cocaine offenses in 2019, only 6.5% were found to have had a leadership or supervisory role in the offense⁴

¹ See U.S. Sentencing Comm'n, Cocaine and Federal Sentencing Policy (May 2002), https://www.uscc.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 U.S. Sentencing Comm'n, Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment, (May 2014), https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/20190131_Revocations.pdf.

⁴ U.S. Sentencing Comm'n, Powder Cocaine Trafficking Offenses (FY19), https://www.uscc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Crack_Cocaine_FY19.pdf.



- 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 years⁵

The cocaine sentencing disparity fosters and entrenches racial inequality

- In 2019, 81% of people convicted of crack cocaine offenses were Black,⁶ even though white and Hispanic people have historically accounted for over 66% of crack cocaine users⁷
- 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% higher⁸
- 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”⁹

Retroactive application of the Fair Sentencing Act safely reduced disproportionate sentences

- Over 3,363 people serving crack cocaine sentences have benefited from retroactive application of Fair Sentencing Act sentencing reductions that were authorized in the First Step Act of 2018¹⁰
- The average sentence reduction from retroactive application of the Fair Sentencing Act was approximately six years, and 91% of those who received reductions were Black.¹¹

⁵ 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).

⁶ 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.

⁷ 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.

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⁸ Drug Policy Alliance, Race and the Drug War, <http://drugpolicy.org/communities/race/index.cfm?printpage=1>

⁹ 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.

¹⁰ U.S. Sentencing Comm’n, First Step Act of 2018 Resentencing Provisions Retroactivity Data Report (Oct. 2020), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/first-stepact/20201019-First-Step-Act-Retro.pdf>.

¹¹ Id.