



CRACK-COCAINE DISPARITY REFORM IN THE STATES

In the 1980s and 1990s, many states and the federal government created harsh mandatory minimum sentencing laws for crack and powder cocaine offenses. Some of these laws treated the drugs very differently, permitting the same mandatory minimum sentences for selling large amounts of powder cocaine or much smaller amounts of crack cocaine. This difference became known as the “crack-powder disparity.”

The crack-powder disparity has been criticized – and should be reformed – because

1. Chemically, crack and powder cocaine are the same drug and produce the same effect on users, though they are ingested differently.¹
2. While both Blacks and whites use crack cocaine at roughly similar (and low) rates overall nationwide,² most crack offenders convicted and sentenced are Black, and most powder cocaine offenders convicted and sentenced are white or Hispanic. Thus, crack-powder disparities create a racially disparate impact in sentencing, resulting in much lengthier sentences for Blacks than for whites or Hispanics who are using or selling chemically identical drugs.³
3. Policies that produce racially disparate impacts, like the crack-powder disparity, undermine public trust in and respect for law enforcement and the justice system.⁴

In response to these criticisms, today only a few jurisdictions continue to use crack-powder sentencing disparities. South Carolina eliminated its disparity in 2010,⁵ followed by Ohio in 2011,⁶ California in 2014,⁷ Maryland in 2016,⁸ and Oklahoma in 2018.⁹ Examples of the remaining disparities and their sentences (not all of which are mandatory minimum terms) are below.

Current Disparities in Crack-Powder Sentencing

JURISDICTION	CRACK WEIGHT	POWDER WEIGHT	SENTENCE	DISPARITY
Arizona	750 milligrams	9 grams	5 years, presumptive ¹⁰	12 to 1 ¹¹
Federal government	28 grams/280 grams	500 grams/5,000 grams	5 years/10 years	18 to 1 ¹²
Iowa	0-40 grams	0-100 grams	Up to 10 years	2.5 to 1 ¹³
	40-200 grams	100-500 grams	Up to 25 years	
	200+ grams	500+ grams	Up to 50 years	
Maine	32 grams	112 grams	4 years	3.5 to 1 ¹⁴
Missouri	8-24 grams	150-450 grams	10 years	18.75 to 1 ¹⁵
New Hampshire	5 grams	140 grams	Up to 30 years	28 to 1 ¹⁶
North Dakota	28 grams	50 grams	5 years ¹⁷	1.8 to 1 ¹⁸
Vermont	60 grams ¹⁹	150 grams ²⁰	Up to 30 years	2.5 to 1
Virginia	250 grams	500 grams	5 years	2 to 1 ²¹



¹ U.S. SENTENCING COMM’N, REPORT TO CONGRESS: FEDERAL COCAINE SENTENCING POLICY 62-67 (May 2007), http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200705_RtC_Cocaine_Sentencing_Policy.pdf.

² SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, RESULTS FROM THE 2015 NAT’L SURVEY ON DRUG USE AND HEALTH: DETAILED TABLES Tbl. 1.43B (2016), <https://www.samhsa.gov/data/sites/default/files/NSDUH-DetTabs-2015/NSDUH-DetTabs-2015/NSDUH-DetTabs-2015.htm#tab1-43b> (showing that 0.2 percent of Whites and 1.0 percent of Blacks over age 12 reported crack use in the past year).

³ See U.S. SENTENCING COMM’N 2007 REPORT at 15-16; IOWA DEP’T OF HUMAN RIGHTS, 2016 PUBLIC SAFETY ADVISORY BOARD ANNUAL REPORT 2 (Dec. 1, 2016), <https://humanrights.iowa.gov/sites/default/files/media/2016%20PSAB%20Report%20to%20the%20Legislature.pdf> (“Iowa data presented to the PSAB suggest that this disparity in penalties contributes to disproportionate incarceration of African-Americans. . . . Research was presented illustrating that the physiological and psychotropic effects of crack and powder cocaine are the same, and that the drugs are now widely acknowledged as pharmacologically identical.”).

⁴ See, e.g., U.S. SENTENCING COMM’N 2007 REPORT at App. B, B1-B2 (describing testimony in which one federal judge explained how jurors refused to serve in cases involving crack cocaine charges); *Editorial: Iowa Should Finally Address Racial Disparities*, DES MOINES REGISTER (Oct. 24, 2016), <http://www.desmoinesregister.com/story/opinion/editorials/2016/10/24/editorial-iowa-should-finally-address-racial-disparities/92682482/>.

⁵ SB 1154, 118th Sess. (S.C. 2010), http://www.scstatehouse.gov/sess118_2009-2010/bills/1154.htm.

⁶ HB 86, §1, 129th Gen. Assem. (Ohio 2011), <https://legiscan.com/OH/text/HB86/2011>.

⁷ SB 1010, 2013-14 Reg. Sess. (Cal. 2014), http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1010.

⁸ SB 1005, 436th Gen. Assem. (Md. 2016), <http://mgaleg.maryland.gov/2016RS/bills/sb/sb1005e.pdf>.

⁹ SB 793, 56th Leg. (OK 2017), <http://www.oklegislature.gov/BillInfo.aspx?Bill=SB793&Session=1800>.

¹⁰ ARIZ. REV. STAT. ANN. § 13-702 (2017).

¹¹ ARIZ. REV. STAT. ANN. §§ 13-3408(A)(2), (B)(2), 13-701(C), 13-3401(36)(b), (c).

¹² 21 U.S.C. §§ 841, 960 (2017). Prior to August 3, 2010, the crack-powder disparity for federal drug crimes was 100-to-one, with mandatory minimum sentences triggered when the crime involved 5 or 50 grams of crack cocaine or 500 or 5,000 grams of powder cocaine. See Pub. Law 111-220 (111th Cong.) (2010).

¹³ IOWA CODE §§ 124.401(1)(c)(3), 124.413(3) (2017).

¹⁴ ME. REV. STAT. tit. 17-A, §§ 1105-A(1)(D), 1252(5-A)(A) (2017). The court may instead give a minimum sentence of as little as nine months imprisonment if it finds by substantial evidence that (1) the mandatory minimum term will produce substantial injustice and will not fail to protect the public or deter others, or (2) fails to achieve the purposes of sentencing, based on the “defendant’s background, attitude, and prospects for rehabilitation and the nature of the victim and the offense.” See ME. REV. STAT. tit. 17-A § 1252(5-A)(B).

¹⁵ MO. REV. STAT. §§ 557.021; 579.065.1 (2017).

¹⁶ N.H. REV. STAT. ANN. § 318-B:26 (2017).

¹⁷ This is the mandatory minimum for a second offense. A “safety valve” exception permits departure from the mandatory minimum “if the court, in giving due regard to the nature of the crime, history and character of the defendant, and the defendant’s chances of successful rehabilitation, finds a compelling reason on the record that imposition of the mandatory minimum sentence would result in manifest injustice to the defendant and that the mandatory minimum sentence is not necessary for the protection of the public.” N.D. CENT. CODE § 12.1-32-02.3 (2017).

¹⁸ N.D. CENT. CODE § 19-03.1-23.1(1)(b)(2), (3) (2017).

¹⁹ VT. STAT. ANN. tit. 18, § 4231(c)(2) (2017).

²⁰ VT. STAT. ANN. tit. 18, § 4231(c)(1).

²¹ VA. CODE ANN. § 18.2-248 (2017). The five-year mandatory minimum sentence is not applicable to first-time, nonviolent offenders who plead guilty and who did not play leadership roles in the offense or possess weapons.