



# ELIMINATING A QUANTIFIABLY UNJUST APPLICATION OF THE LAW (EQUAL) ACT

*S. 79 / H.R. 1693*

## **Background:**

For more than three decades, a sentencing disparity has existed in federal law between two forms of the same drug—crack and powder cocaine. The Anti-Drug Abuse Act of 1986 enacted a 100:1 disparity in the quantity of cocaine necessary to trigger certain mandatory minimums. This law meant that the distribution of 5 grams of crack cocaine was punished the same as 500 grams of powder cocaine. Years of research, evidence, and experience raised questions about the justifications for this disparity that was initially adopted in good faith. In recent years, the Fair Sentencing Act and the First Step Act have reduced this disparity to 18:1 but this disparity still exists today.

## **Key Facts:**

- Research has shown that the use of crack and powder cocaine results in comparable “physiological and psychoactive effects” and are nearly chemically identical.<sup>1</sup>
- Any differences in associated violence between crack and powder cocaine are not related to the drugs themselves.<sup>2</sup> In fact, both forms are associated with less **violence** than alcohol.<sup>3</sup>
- There are surely many negative health outcomes associated with using both forms of cocaine, but research has failed to show more negative **health outcomes** for users of crack cocaine when compared to other substances.<sup>4</sup>
- **Drug use** is not clearly impacted by the sentences imposed for their use or distribution. There was no change in crack use following the Fair Sentencing Act’s reduction in the disparity and powder cocaine use declined.<sup>5</sup>

1. Dorothy K. Hatsukami & Marian W. Fischman, *Crack Cocaine and Cocaine Hydrochloride: Are the Differences Myth or Reality?*, 276 JAMA 1580 (1996).

2. Michael G Vaughn, et al., *Is crack cocaine use associated with greater violence than powdered cocaine use? Results from a national sample*, 36 Amer. J. Drug Alcohol Abuse 181 (2010).

3. *Id.*

4. Ainslie J. Butler, et al., *Health outcomes associated with crack-cocaine use: Systematic review and meta-analyses*, 180 Drug Alcohol Dependence 401 (2017).

5. Lauryn Saxe Walker & Briana Mezuk, *Mandatory minimum sentencing policies and cocaine use in the U.S., 1985–2013*, 18 BMC Int’l Health Hum. Rts. 43 (2018).

- There is a **clear racial divide** between those convicted for crack and powder cocaine crimes. Almost 81% of those convicted for crack cocaine trafficking are Black, while they make up only 27% of those convicted of powder cocaine trafficking.<sup>6</sup>
- Reducing this disparity in past reforms has not resulted in higher **recidivism**, even though individuals served an average of 37 fewer months in federal prison.<sup>7</sup>
- The reforms in the Fair Sentencing Act did not reduce the willingness of defendants to work with federal prosecutors and assist in other **investigations**.<sup>8</sup>
- More than 40 states either never had or have ended their crack-powder sentencing disparities. These states have been able to keep their communities safe even without such disparities.<sup>9</sup>
- This disparity was created to stop drug kingpins and large drug distribution networks, but data from the United States Sentencing Commission shows that most individuals convicted of crack cocaine distribution are only low-level or street-level dealers.<sup>10</sup>

## The Solution:

The totality of the research shows that this sentencing disparity has done nothing to reduce recidivism, improve public safety, or reduce drug use but does disproportionately harm certain communities. The EQUAL Act will end the federal sentencing distinction between powder and crack cocaine as well as provide retroactive implementation for those individuals already sentenced. Those who were previously convicted under the existing disparity will not be automatically released or have their sentence reduced. They will only have the right to request a sentence reduction from a federal judge that must be analyzed under factors already specified by 18 U.S.C. § 3553(a). The sentences imposed for other crimes the individual was convicted of in that case or previous cases cannot be reconsidered by a judge under this reform. A judge must also consider the entirety of an individual's criminal history before reducing the sentence for any cocaine offenses and that history will still be used to calculate a revised Guidelines recommendation.

## Our Vision for Criminal Justice and Sentencing:

Americans for Prosperity believes that our criminal justice system should promote public safety, preserve human dignity, and provide equal justice for all under the law. Accountability is an essential component of justice, but that accountability must be proportional based on the harm caused to a victim or the local community. Differences in the sentences imposed for the same or substantially similar crime that are not justified by public safety or the harm caused to individuals and communities undermine trust and credibility in the law, our courts, and the justice system.

6. United States Sentencing Commission, *Quick Facts: Crack Cocaine Trafficking Offenses*, United States Sentencing Commission (2020), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Crack\\_Cocaine\\_FY19.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Crack_Cocaine_FY19.pdf); United States Sentencing Commission, *Quick Facts: Powder Cocaine Trafficking Offenses*, United States Sentencing Commission (2020), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Powder\\_Cocaine\\_FY19.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Powder_Cocaine_FY19.pdf).

7. United States Sentencing Commission, *Retroactivity & Recidivism: The Drugs Minus Two Amendment*, United States Sentencing Commission (2020), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200708\\_Recidivism-Drugs-Minus-Two.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200708_Recidivism-Drugs-Minus-Two.pdf).

8. United States Sentencing Commission, *Report to the Congress: Impact of the Fair Sentencing Act of 2010*, United States Sentencing Commission (2015), [https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/201507\\_RtC\\_Fair-Sentencing-Act.pdf](https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/201507_RtC_Fair-Sentencing-Act.pdf).

9. FAMM, *Crack-Cocaine Disparity Reform in the States*, FAMM (2018), <https://famm.org/wp-content/uploads/Crack-Disparity-in-the-States.pdf>.

10. United States Sentencing Commission, *supra* note 8.