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R SHEET ON THE EQUAL ACT AND THE FEDERAL COCAINE SENTENCING DISPARITY

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BACKGROUND

In 1986, [the death of college basketball star Len Bias](#) sparked a panic in the country about drugs. The hysteria focused largely on crack cocaine, despite the fact that Bias' death actually resulted from an overdose on powder.

Congress quickly passed the [Anti-Drug Abuse Act \(ADAA\)](#), which included heightened mandatory minimum sentences for drug trafficking, with crack cocaine treated more harshly than powder cocaine under the law. Only 5 grams of crack cocaine would trigger the same new mandatory minimum sentences as 500 grams of powder cocaine.

The new 100-to-1 sentencing law disparity between crack and powder cocaine has had a myriad of consequences, which have resulted in heavy research and resulting policy changes in the decades since the ADAA's enactment.

According to a [February 1995 United States Sentencing Commission \(USSC\)](#) report to Congress, powder and crack cocaine are indistinguishable forms of the same drug. The USSC posited that Congress may need to reconsider the disparity it created and even, [in May 1995, proposed equalizing the penalties](#) between crack and powder.

It took until 2010 for Congress to take action on the results of the commission tasked with studying federal sentencing laws surrounding cocaine. [The Fair Sentencing Act \(FSA\)](#) did not fully eliminate the trafficking disparity, but prospectively reduced it to 18-to-1 while eliminating the simple possession mandatory minimum sentence unique to crack cocaine.

Although the reduction was not retroactive in statute, the Supreme Court's ruling in [Dorsey v. United States \(2012\)](#) allowed it to be applied in cases where the crime was committed before, but sentencing took place after, the FSA was law, and the First Step Act of 2018 made it fully retroactive for all serving time under the law.

SUMMARY

- Prison sentences for crack cocaine offenses remain harsher than those for powder cocaine, despite their identical chemical composition.
- The EQUAL Act would eliminate this disparity by increasing the threshold required to trigger a mandatory minimum sentence for crack cocaine.
- Eliminating the disparity would bring public policy into line with decades of research regarding public safety, racial impact and scientific realities.
- Pivoting away from the war on drugs is critical to rightsizing the justice system and holding it accountable to the people it is meant to serve.

CURRENT DEBATE

Today, the 18-to-1 sentencing disparity between crack and powder cocaine still stands. Many lawmakers are seeking passage of the [Eliminating a Quantifiably Unjust Application of the Law \(EQUAL\) Act](#) to eliminate it entirely.

A bipartisan bill sponsored by Rep. Hakeem Jeffries (D-N.Y.) in the House ([H.R. 1693](#)) and Sen. Cory Booker (D-N.J.) in the Senate ([S. 79](#)), the EQUAL Act's stated purpose is to eliminate the disparity in sentencing for cocaine offenses.

Upon its favorable reporting out of the House Committee on the Judiciary (HJC) on July 21, the [four primary sponsors of the EQUAL Act expressed](#) how decades of sentencing under the 100-to-1 and now 18-to-1 disparity has fueled a costly mass incarceration epidemic with no public safety benefit.

It is on those grounds that most advocates for the EQUAL Act argue. Firstly, that the disparity is part of the larger war on drugs of the past decades which resulted in over-incarceration, at no benefit to public safety. Other advocates also cite the racial implications of the disparity.

As [HJC Chairman Jerry Nadler \(D-N.Y.\) commented](#), the federal cocaine sentencing disparity also created racial disparity in incarceration, citing that average sentences for Black people were nearly 50 percent higher than for white people just a few years after the ADAA was enacted.

Republican [Gov. Asa Hutchinson of Arkansas also argued that](#) reducing the disparity and making it retroactive constituted good steps toward justice, but that distrust still remains among minorities due to the disparity. He noted how, even after the FSA was made retroactive, in 2019, Black people still made up a supermajority—81 percent—of federal crack convictions, with prison times 18 times longer than those for powder cocaine.

Opponents of advancing the EQUAL Act raise concerns about increases in crime and the potential of hamstringing law enforcement. During the HJC markup of the EQUAL Act, [Rep. Chip Roy \(R-Texas\) expressed this](#), vocalizing his concerns about preventing law enforcement and prosecutors from effectively going after bad actors. He addressed the question of the disparity, proposing increasing penalties for powder instead of lowering them for crack, which is a proposal echoed by other opponents as well, such as Sen. Tom Cotton (R-Ark.), [who has introduced legislation to this effect](#).

ACTION ITEMS

Every single member of the House and Senate, Republican, Democrat and Independent alike, [should support the advancement and passage of the EQUAL Act](#). The traditional mantra “lock them up and throw away the key” is a relic of the past. Particularly, proponents of limited and effective government can no longer be allowed to turn a blind eye when it comes to scrutinizing the justice system and its failed war on drugs.

While cocaine, and its derivative crack cocaine, are dangerous, have high potential for abuse and may lead to severe dependence, the reality remains that lengthy prison sentences for drug crimes simply do not deter drug use, prevent overdoses or increase public safety. In fact, the resources they pull from our justice system to incarcerate individuals for years and years pose a threat to public safety and drain tax dollars.

Of the approximately [2.3 million incarcerated nationwide](#), nearly [25 percent are imprisoned for drug offenses](#). Among federal inmates, the numbers are more staggering—[92 percent have a drug offense](#) as their most serious charge.

Harsh penalties for drug offenses plainly do not deter future criminal activity. Increased incarceration, like that resulting from the war on drugs, has demonstrated only [a small impact on crime rates](#), with the majority of reduction related only to property crimes.

Therefore, the idea of increasing the penalty for powder cocaine as opposed to reducing the penalty for crack cocaine in order to rightsize the disparity is nonsensical. It would trap even more individuals in the unnecessary and harmful cycle of incarceration, limiting opportunities and preventing those with drug offenses from truly successful rehabilitation.

Instead, the proposed solution in the EQUAL Act presents a far better alternative. Raising the threshold for crack cocaine is not a new idea either, from the left or the right. Just a few years after the enactment of the FSA, Sen. Rand Paul (R-Ky.) [took a significant step by introducing legislation to eliminate any disparity](#) by raising the threshold for crack cocaine, arguing that the reduction to 18-to-1 did not go far enough.

Put succinctly, the war on drugs has failed. It has failed to save lives from drug overdoses, reduce crime or make any of us safer. Perhaps worst of all, it has failed those forcibly caught up for decades on end in the justice system as a result of unresearched, knee-jerk policy changes from a hysteria-ridden Congress decades ago. It is time for a change.

CONTACT US

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