



DUE PROCESS

INSTITUTE

Support the Bipartisan EQUAL Act, S. 524 and H.R. 1062, to End Unjust Federal Sentencing Policy

The disparity in sentencing between crack cocaine and powdered cocaine is currently one of the most unjust aspects of federal sentencing law.

In 1986, Congress enacted mandatory minimum sentences for certain drug offenses, including substantially harsher penalties for crack cocaine. These penalties created a sentencing disparity of 100:1 when compared to powdered cocaine: a person charged with possession of 5 grams of crack cocaine faced the same five-year mandatory minimum penalty as someone trafficking 500 grams of powdered cocaine. But this sentencing disparity did not curtail the sale of crack cocaine.

Recognizing its mistake, in 2010, Congress passed the Fair Sentencing Act to reduce the disparity from 100:1 down to 18:1, but the reduction only applied to current and future cases. It wasn't until the First Step Act of 2018 that the 2010 reforms were applied to those who had already been over-sentenced.

There is overwhelming evidence that the disproportionately higher penalties for crack cocaine have had a racially disparate outcome. According to the U.S. Sentencing Commission, [77.6 percent of individuals sentenced for crack cocaine offenses in FY 2021 were Black](#) while another 15.2 percent were Hispanic and [87.5 percent of the people in federal prison](#) for drug trafficking offenses involving crack cocaine were Black. To further highlight the law's racially disparate outcomes, [91.4 percent of those who received sentencing reductions as a result of the First Step Act's retroactivity provision were Black](#).

Despite these disproportionate outcomes in incarceration, a 2006 study published by the American Civil Liberties Union showed that Whites are actually more likely to use crack cocaine. As the Center for Behavioral Health Statistics and Quality reported in the *National Survey on Drug Use and Health*, nearly 80 percent of respondents who reported usage of crack cocaine in their lifetime were White.

It is no longer good enough to keep reducing the disparity; it must end. Re-introduced by Sens. Cory Booker (D-NJ), Dick Durbin (D-IL), Lindsey Graham (R-SC), Thomas Tillis (R-NC), Christopher Coons (D-DE), Cynthia Lummis (R-WY), Sheldon Whitehouse (D-RI), and Rand Paul (R-KY) and Reps. Hakeem Jeffries (D-NY), Kelly Armstrong (R-ND), Bobby Scott (D-VA), and Don Bacon (R-NE), the Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act, [S. 524](#) and [H.R. 1062](#), would equalize the treatment in sentencing between crack cocaine and powdered cocaine, reducing the ratio from 18:1 to 1:1—finally, equal treatment under the law. Importantly, the EQUAL Act would make these changes retroactive upon a motion from the defendant, the Bureau of Prisons, or a prosecutor so that justice may be served to all who are still impacted.

The EQUAL Act received significant bipartisan support last Congress. The House version of the bill passed by a vote of 361-66 in September 2021. The Senate version had over 35 cosponsors, including 23 Democrats and 11 Republicans, but did not receive a committee or floor vote. The EQUAL Act has been widely endorsed by local and national law enforcement groups as well as civil and human rights organizations across the political spectrum. **Congress must address indisputable racial disparities in federal sentencing. It is vital that Republicans and Democrats work together to remedy this longstanding injustice and send the EQUAL Act to President Biden's desk this year.**

Due Process Institute is a bipartisan nonprofit working to restore principles of fairness in our criminal legal system. For more information, please contact Jason Pye, Director, Rule of Law Initiatives, at jason@idueprocess.org.