



DUE PROCESS

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Support the Bipartisan EQUAL Act 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 laws. Congress passed the Anti-Drug Abuse Act of 1986 to escalate the war on drugs by creating mandatory minimum sentences for drug offenses, including substantially harsher penalties for crack cocaine.

The harsher penalties for crack cocaine created a sentencing disparity of 100:1 when compared to powdered cocaine. That meant that a defendant charged with possession of 5 grams of crack cocaine faced the same five-year mandatory minimum penalty as a defendant trafficking 500 grams of powdered cocaine.

In 2010, Congress passed the Fair Sentencing Act to reduce the disparity between crack cocaine and powdered cocaine from the 100:1 ratio to 18:1. The Fair Sentencing Act enjoyed strong bipartisan support, bringing together a wide range of political views as diverse as Sen. Dick Durbin (D-IL) and Sen. Jeff Sessions (R-AL), and passed both chambers by voice vote. The change applied to current and future cases. It wasn't until the landmark criminal justice reform bill, the First Step Act of 2018, that the Fair Sentencing Act reforms were given retroactive effect for those who had already been sentenced.

The evidence that harsher penalties for crack cocaine have had a racially disparate outcome is overwhelming. According to the U.S. Sentencing Commission, [81.1 percent of individuals sentenced for crack cocaine in FY 2019 were Black](#) while another 12.6 percent were Hispanic. Highlighting the racially disparate outcome again, [91.4 percent of individuals who received sentencing reductions as a result of the First Step Act's retroactivity provision were Black](#). Although the data show a disproportionate incarceration outcome, 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.

Introduced by Sens. Cory Booker (D-NJ) and Dick Durbin (D-IL) and Reps. Hakeem Jeffries (D-NY), Bobby Scott (D-VA), Kelly Armstrong (R-ND), and Don Bacon (R-NE), the Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act, [S. 79](#) and [H.R. 1693](#), would equalize the treatment in sentencing between crack cocaine and powdered cocaine, reducing the ratio from 18:1 to 1:1. Importantly, the bipartisan EQUAL Act would make these changes retroactive upon a motion from the defendant, the Bureau of Prisons, or a federal prosecutor.

The devastating racial disparities in federal sentencing cannot be ignored by Congress. It is important that Republicans and Democrats work together to correct them in the name of justice.

Due Process Institute is a bipartisan nonprofit that works to honor, preserve, and restore principles of fairness in the criminal legal system. If you have any questions or concerns, please contact Director, Rule of Law Initiatives, Jason Pye at jason@idueprocess.org.