



# LAW ENFORCEMENT LEADERS

To Reduce Crime & Incarceration

Hon. Charles E. Schumer  
United States Senate  
322 Hart Office Bldg.  
Washington, D.C. 20510

Hon. Mitch McConnell  
United States Senate  
317 Russell Office Bldg.  
Washington, D.C. 20510

Hon. Richard J. Durbin  
United States Senate  
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Hon. Chuck Grassley  
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Hon. Cory A. Booker  
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Hon. Mike Lee  
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Hon. Rob Portman  
United States Senate  
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June 22, 2021

**RE: Law Enforcement Leaders Support for the EQUAL Act (S. 79) and Smarter Sentencing Act of 2021 (S. 1013)**

Dear Senators Schumer, McConnell, Durbin, Grassley, Booker, Lee, and Portman:

We write on behalf of Law Enforcement Leaders to Reduce Crime & Incarceration, a national coalition of over 200 current and former law enforcement officials from across the political spectrum, dedicated to protecting public safety and reducing unnecessary arrests, prosecutions, and incarceration. We urge you to enact S. 79, the Eliminating a Quantifiably Unjust Application of the Law Act of 2021 (“EQUAL Act”) and S. 1013, the Smarter Sentencing Act of 2021 (“SSA”). The EQUAL Act would eliminate the crack and powder cocaine federal sentencing disparity, which would apply retroactively to allow for resentencing. The SSA, for its part, would lower the applicable federal mandatory minimums in certain narcotics cases and allow federal judges to make individualized sentencing determinations for people charged with nonviolent drug offenses.

Enacted by Congress in 1986, the Anti-Drug Abuse Act established mandatory minimum terms of imprisonment triggered by the possession of specific amounts of cocaine.<sup>1</sup> This law — alongside sentencing guidelines that Congress put forward two years earlier — divested sentencing courts of discretion in narcotics cases, all but assuring substantial prison terms for many defendants who would have otherwise received much lesser penalties.<sup>2</sup>

But that is not all. Because this legislation concluded, mistakenly, that crack cocaine was scientifically more addictive, and that crack cocaine incited violent behavior, Congress also punished crack-

cocaine offenders 100 times more harshly than powder-cocaine offenders.<sup>3</sup> In other words, a person convicted of distributing five grams of crack would receive a mandatory minimum of five years imprisonment, while a person convicted of distributing 500 grams of powder cocaine — 100 times more cocaine — would receive the exact same sentence.

In the some 30 years since Congress passed these laws, we now know that scant scientific or penological evidence supports the 100:1 ratio; crack cocaine is no more addictive nor more likely to incite violence than powder cocaine.<sup>4</sup> Although the Fair Sentencing Act of 2010 reduced the sentencing disparity between crack and powder cocaine from 100:1 to 18:1, and despite the First Step Act of 2018 making the 18:1 sentencing reduction retroactively applicable, Congress must once and for all end this sentencing disparity and attempt to unwind the damage wrought by earlier laws, and it can do so by passing the EQUAL Act.<sup>5</sup>

Similarly, the SSA is rooted in the understanding that lengthy sentences, often triggered by mandatory minimums, do not necessarily promote public safety. In 2016, drug trafficking crimes accounted for 67 percent of all federal offenses carrying a mandatory minimum.<sup>6</sup> The average sentence length for individuals facing a mandatory minimum due to drug-related crimes was over 10 years, significantly longer than the average sentence of three years for drug offenders convicted of offenses that do not carry mandatory minimums.<sup>7</sup> These overly-punitive responses to nonviolent drug crimes do little to promote public safety or reduce drug trafficking.<sup>8</sup> For example, research has shown that mandatory minimums in cocaine cases are not effective at reducing cocaine use or drug-related crimes.<sup>9</sup> Additionally, laws that trigger lengthy prison terms are costly, with the federal government spending, on average, nearly \$40,000 to incarcerate one person per year.<sup>10</sup>

Critically, both bills also offer Congress an opportunity to reduce the racial disparities caused by many of our federal drug sentencing laws. Crack-cocaine sentencing laws, addressed by the EQUAL Act, have had particularly severe consequences for Black Americans. While comprising less than a third of people convicted of powder cocaine trafficking, Black Americans made up nearly 81 percent of those convicted of crack cocaine-related crimes in 2019.<sup>11</sup> Despite crack and powder cocaine being nearly identical chemically, Black Americans were, and continue to be, disproportionately subjected to the more severe penalties associated with crack cocaine offenses. Similarly, the burdens associated with mandatory minimum sentences, which the SSA seeks to reduce, are not experienced equally. While comprising less than 32 percent of the U.S. population, Black and Hispanic individuals comprise over 70 percent of those convicted of federal offenses with a mandatory minimum.<sup>12</sup> Together, these federal drug sentencing policies have devastated communities of color, disrupting families and draining neighborhoods of resources.<sup>13</sup>

For the reasons herein, we urge the Senate to pass the EQUAL and Smarter Sentencing Acts. If passed, both bills will improve the federal sentencing scheme in drug cases without jeopardizing public safety.

Respectfully yours,



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<sup>1</sup> The Anti-Drug Abuse Act, H.R. 5484, 99<sup>th</sup> Cong. (1986).

<sup>2</sup> “Simplification Draft Paper: The Sentencing Reform Act of 1984,” *United States Sentencing Commission*, accessed June 9, 2021, <https://www.ussc.gov/research/research-and-publications/simplification-draft-paper-2>.

<sup>3</sup> *The Crack Sentencing Disparity and the Road to 1:1*, United States Sentencing Commission, 2009, [https://www.ussc.gov/sites/default/files/pdf/training/annual-national-training-seminar/2009/016b\\_Road\\_to\\_1\\_to\\_1.pdf](https://www.ussc.gov/sites/default/files/pdf/training/annual-national-training-seminar/2009/016b_Road_to_1_to_1.pdf).

<sup>4</sup> *Federal Crack Cocaine Sentencing*, The Sentencing Project, 2010, 6, <https://www.sentencingproject.org/publications/federal-crack-cocaine-sentencing/>; Deborah J. Vagins and Jesselyn McCurdy, *Cracks in the System: 20 Years of the Unjust Federal Crack Cocaine Law*, American Civil Liberties Union, 2006, 4-5, <https://www.aclu.org/other/cracks-system-20-years-unjust-federal-crack-cocaine-law>.

<sup>5</sup> *Law Enforcement Leaders to Reduce Crime & Incarceration to President Donald J. Trump*, Letter, November 13, 2018, <https://www.judiciary.senate.gov/imo/media/doc/2018-11-13%20-%20Law%20Enforcement%20Leaders%20Support%20Letter%20First%20Step%20Act.pdf>; *Report to the Congress: Impact of*



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- the Fair Sentencing Act of 2010*, United States Sentencing Commission, 2015, 3, 10, [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).
- <sup>6</sup> *Quick Facts: Mandatory Minimum Penalties*, United States Sentencing Commission, 2016, [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick\\_Facts\\_Mand\\_Mins\\_FY16.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Mand_Mins_FY16.pdf).
- <sup>7</sup> United States Sentencing Commission, *supra* note 6.
- <sup>8</sup> *Federal Drug Sentencing Laws Bring High Cost, Low Return*, Pew Charitable Trusts, 2015, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/08/federal-drug-sentencing-laws-bring-high-cost-low-return>.
- <sup>9</sup> Jonathan P. Caulkins, *Are Mandatory Minimum Drug Sentences Cost-Effective?*, RAND Corporation, 1997, [https://www.rand.org/pubs/research\\_briefs/RB6003.html](https://www.rand.org/pubs/research_briefs/RB6003.html).
- <sup>10</sup> *Annual Determination of Average Cost of Incarceration*, United States Department of Justice, Bureau of Prisons, 2018, [https://www.federalregister.gov/documents/2018/04/30/2018-09062/annual-determination-of-average-cost-of-incarceration#:~:text=The%20fee%20to%20cover%20the,per%20day\)%20in%20FY%202017](https://www.federalregister.gov/documents/2018/04/30/2018-09062/annual-determination-of-average-cost-of-incarceration#:~:text=The%20fee%20to%20cover%20the,per%20day)%20in%20FY%202017).
- <sup>11</sup> *Quick Facts: Powder Cocaine Trafficking Offenses*, United States Sentencing Commission, 2019, [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); *Federal Crack Cocaine Sentencing*, The Sentencing Project, 2010, 5, <https://www.sentencingproject.org/publications/federal-crack-cocaine-sentencing/>.
- <sup>12</sup> “Quick Facts: United States,” *United States Census Bureau*, 2019, <https://www.census.gov/quickfacts/fact/table/US/RHI225219#RHI225219>; United States Sentencing Commission, *supra* note 6.
- <sup>13</sup> The Sentencing Project, *supra* note 11, at 5; “Race and the Drug War,” *Drug Policy Alliance*, accessed June 3, 2021, <https://drugpolicy.org/issues/race-and-drug-war>.