



LAW ENFORCEMENT LEADERS

To Reduce Crime & Incarceration

STATEMENT OF LAW ENFORCEMENT LEADERS TO REDUCE CRIME & INCARCERATION

HEARING ON THE EQUAL ACT, S. 79

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

June 22, 2021

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

Dear Chairman Durbin, Ranking Member Grassley, and members of the Committee:

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.¹ 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.²

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.³ 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.⁴ 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.⁵

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.⁶ 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.⁷ These overly-punitive responses to nonviolent drug crimes do little to promote public safety or reduce drug trafficking.⁸ For example, research has shown that mandatory minimums in cocaine cases are not effective at reducing cocaine use or drug-related crimes.⁹ 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.¹⁰

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 2019.¹¹ 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.¹² Together, these federal drug sentencing policies have devastated communities of color, disrupting families and draining neighborhoods of resources.¹³

For the reasons herein, we respectfully urge the Senate Committee on the Judiciary 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,



Ronal W. Serpas, Ph.D.
Executive Director
Law Enforcement Leaders to
Reduce Crime & Incarceration

Former Police Superintendent
New Orleans, Louisiana

Hassan Aden

Federal Consent Decree Monitor
Cleveland, Ohio and Baltimore, Maryland
Former Executive Fellow
Police Foundation
Former Police Chief
Greenville, North Carolina

Eric M. Atkinson

Police Chief
Menomonie, Wisconsin

James Baker

Commissioner
Vermont Department of Corrections

Jean Peters Baker

County Prosecutor
Jackson County, Missouri

Bill Bratton

Former Police Commissioner
New York, New York
Former Police Chief
Los Angeles, California
Former Police Commissioner
Boston, Massachusetts

Kenton Buckner

Police Chief
Syracuse, New York
Former Police Chief
Little Rock, Arkansas

James Bueermann

Former President
Police Foundation
Former Police
Chief Redlands, California

Zachary Carter

Former Corporation Counsel
New York City, New York
Former U.S. Attorney
Eastern District of New York

Kami Chavis

Former Assistant U.S. Attorney
District of Columbia

John Chisholm

District Attorney
Milwaukee County, Wisconsin

John Choi

County Attorney
Ramsey County, Minnesota

Steve Conrad

Former Police Chief
Louisville, Kentucky

Brendan Cox

Director of Policing Strategies
LEAD National Support Bureau
Former Police Chief
Albany, New York

Richard H. Deane, Jr.

Former President
National Association of Former United States Attorneys
Former U.S. Attorney
Northern District of Georgia

W. Thomas Dillard

Former U.S. Attorney
Eastern District of Tennessee

Michael O. Freeman

County Attorney
Hennepin County, Minnesota

Douglas Gansler

Former Attorney General
Maryland
Former State's Attorney
Montgomery County, Maryland

Barry Grissom
Former U.S. Attorney
District of Kansas

Gregory Hamilton
Former Sheriff
Travis County, Texas

Ronald Hampton
Former Chair
National Black Police Association
Former Executive Director
National Black Police Association

Hal Hardin
Board of Directors Member
National Association of Former United States Attorneys
Former U.S. Attorney
Middle District of Tennessee

Brent D. Harris
City Prosecutor
Flagstaff, Arizona

Janeé Harteau
Former Police Chief
Minneapolis, Minnesota

Walter Holton
Former U.S. Attorney
Middle District of North Carolina

John Hummel
District Attorney
Deschutes County, Oregon

Joseph Jaffe
Former District Attorney
Sullivan County, New York

Chris Magnus
Police Chief
Tucson, Arizona
Former Police Chief
Richmond, California

Beth McCann
District Attorney
Denver, Colorado

Risco Mention-Lewis
Deputy Police Commissioner
Suffolk County, New York

Joel Merry
Sheriff
Sagadahoc County, Maine
Former President
Maine Sheriffs Association

Peter Newsham
Police Chief
Prince William, Virginia
Former Police Chief
Washington, District of Columbia

Matthew D. Orwig
Former U.S. Attorney
Eastern District of Texas

Kathleen O'Toole
Former Police Chief
Seattle, Washington
Former Police Commissioner
Boston, Massachusetts

Angela Pacheco
Former District Attorney
Santa Fe, Rio Arriba, and Los Alamos Counties
New Mexico

Melba Pearson
Former President
National Black Prosecutors Association
Former Assistant State Attorney
Miami-Dade County, Florida

Andrew P. Peralta
Former President
National Latino Peace Officers Association
Former Corrections Captain (LVMPD)
Las Vegas, Nevada

Brad Pigott

Former U.S. Attorney
Southern District of Mississippi

Richard J. Pocker

Former U.S. Attorney
District of Nevada

Karl A. Racine

Attorney General
Washington, District of Columbia

Rick Raemisch

Former Executive Director
Colorado Department of Corrections
Former Sheriff
Dane County, Wisconsin

Charles H. Ramsey

Former Police Commissioner
Philadelphia, Pennsylvania

Gary Raney

Former Sheriff
Ada County, Idaho

Richard Rossman

Executive Director
National Association of Former United States Attorneys
Former U.S. Attorney
Eastern District of Michigan

Richard Stanek

Former President
Major County Sheriffs' Association
Former Sheriff
Hennepin County, Minnesota

Darrel Stephens

Former Executive Director
Major Cities Chiefs Association
Former Police Chief
Charlotte Mecklenburg, North Carolina

Donald K. Stern

Former President
National Association of Former United States Attorneys
Former U.S. Attorney
District of Massachusetts

Gregory A. Thomas

Senior Executive for Law Enforcement Operations
Office of the District Attorney
Kings County, New York
Former President
National Organization of Black Law Enforcement Executives

Cyrus Vance, Jr.

District Attorney
New York County, New York

John Walsh

Former U.S. Attorney
District of Colorado
Former Chair
Attorney General's Advisory Committee

John E. Wetzel

Secretary of Corrections
Department of Corrections, Pennsylvania

Stephen Zappala, Jr.

District Attorney
Allegheny County, Pennsylvania

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

² "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>.

³ *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.

⁴ *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>.

⁵ *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 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.

⁶ *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.

⁷ United States Sentencing Commission, *supra* note 6.

⁸ *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>.

⁹ Jonathan P. Caulkins, *Are Mandatory Minimum Drug Sentences Cost-Effective?*, RAND Corporation, 1997, https://www.rand.org/pubs/research_briefs/RB6003.html.

¹⁰ *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).

¹¹ *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; *Federal Crack Cocaine Sentencing*, The Sentencing Project, 2010, 5, <https://www.sentencingproject.org/publications/federal-crack-cocaine-sentencing/>.

¹² “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.

¹³ 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>.