

March 4, 2022

The Honorable Nancy Pelosi
Speaker, U.S. House of Representatives
Washington, DC 20515

The Honorable Charles Schumer
Majority Leader, U.S. Senate
Washington, DC 20510

The Honorable Kevin McCarthy
Minority Leader, U.S. House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Minority Leader, U.S. Senate
Washington, DC 20510

Speaker Pelosi, Leader McCarthy, Leader Schumer, and Leader McConnell,

We, the undersigned organizations, strongly urge you to include the text of the Eliminating a Quantifiably Unjust Application of the Law “EQUAL” Act (S. 79, H.R. 1693), in the upcoming consolidated appropriations legislation that Congress will consider before the government funding deadline on Friday, March 11.

The EQUAL Act eliminates the unjust sentencing disparity between crack cocaine and powder cocaine. Congress created the original 100:1 sentencing disparity between crack cocaine and powder cocaine in the Anti-Drug Abuse Act of 1986. The legislative history shows that the disparity was arbitrary and not grounded in evidence. In 2010, Congress passed the bipartisan Fair Sentencing Act to reduce the sentencing disparity to 18:1. Although the Fair Sentencing Act applied to then-current and prospective cases, Sec. 404 of the First Step Act of 2018 made the Fair Sentencing Act retroactive. The federal disparity deviates from state policy as only nine states treat the substances differently and¹ only 15 had a disparity at any point in time.²

Now, Congress has the opportunity to make our justice system fairer while upholding public safety by passing the EQUAL Act. This legislation has attracted support across the political spectrum, making it one of the last opportunities in this Congress to move critical criminal justice legislation that has the support of Democrats, Republicans, law enforcement, and civil rights organizations. As evidenced by the 361 to 66 vote in the House of Representatives in September 2021³ and the extensive list of cosponsors in both the House and the Senate, the EQUAL Act may truly be one of the most bipartisan pieces of legislation that the 117th Congress can consider.

¹ FAMM, “Crack-Cocaine Disparity Reform in the States,” available at <https://famm.org/wp-content/uploads/Crack-Disparity-in-the-States.pdf>

² U.S. Sentencing Commission, “Report to Congress: Cocaine and Federal Sentencing Policy,” May 2007, available at

https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200705_RtC_Cocaine_Sentencing_Policy.pdf

³ Roll call vote 297, 117th Congress, available at <https://clerk.house.gov/Votes/2021297>

Although public safety is at the forefront of the mind of every American, so is ensuring that the criminal justice system is fundamentally fair. Public safety and equity in the criminal justice system are not mutually exclusive notions. The *2020 National Drug Threat Assessment* did not list crack cocaine as a drug of concern.⁴ In fact, crack cocaine prosecutions have declined from 26.8 percent (FY 1996) of all federal drug trafficking prosecutions⁵ to only 7.5 percent (FY 2020).⁶ With the backing of law enforcement and civil rights groups, the EQUAL Act is best positioned for inclusion as part of the consolidated appropriations legislation that Congress will consider.

The EQUAL Act strikes the right balance between public safety and fundamental fairness. Law enforcement will still have tools at their disposal to hold those accountable who pose the biggest threat to public safety. Meanwhile, the bill will right one of the most perverse racial disparities in federal criminal law. According to the U.S. Sentencing Commission, over 76 percent of drug trafficking defendants for crack cocaine offenses in FY 2020 were Black,⁷ and according to testimony by the Department of Justice, roughly 90 percent of individuals serving time for crack offenses in federal prison are Black.⁸

The EQUAL Act will also help restore a measure of trust in the criminal justice system. As former U.S. Attorney for the Western District of Kentucky Russell Coleman has said, “[D]uring my outreach to career federal prosecutors, state and federal narcotics officers at the senior levels, local and state law enforcement leaders, and judges (those on the front lines of battling drug use and violence in our communities), I was met with a near unanimous belief that this is the right legislation at the right time.”⁹

In closing, we point to Arkansas Gov. Asa Hutchinson’s testimony before the Senate Judiciary Committee. A former head of the Drug Enforcement Administration, Gov. Hutchinson has a unique perspective on the sentencing disparity. He said, “Congress now has the opportunity to build on the bipartisan successes of the Fair Sentencing Act and the First Step Act by eliminating the sentencing disparity between crack cocaine and powder cocaine once and for all. The strength of our justice system is dependent on the perception of fundamental fairness.”¹⁰

⁴ Drug Enforcement Administration, 2020 National Drug Threat Assessment, available at https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf

⁵ Race of Drug Defendant by Drug Type, FY 1996, U.S. Sentencing Commission, available at https://www.uscc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/1996/TAB-29_0.pdf

⁶ U.S. Sentencing Commission, Race of Drug Defendant by Drug Type, FY 2020, available at <https://www.uscc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2020/TableD2.pdf>

⁷ *Id.*

⁸ Sarah Lynch, *U.S. Justice Department backs bill to end disparities in crack cocaine sentences*, Reuters (June 22, 2021), <https://www.reuters.com/world/us-us-justice-department-backs-bill-end-disparities-crack-cocaine-sentences-2021-06-22/>

⁹ Testimony of the Honorable Russell Coleman, available at <https://www.judiciary.senate.gov/imo/media/doc/Statement%20for%20the%20Record%20from%20Russell%20Coleman%2006.21.21.pdf>

¹⁰ Testimony of the Honorable Asa Hutchinson, available at [https://www.judiciary.senate.gov/imo/media/doc/Statement%20for%20the%20Record%20from%20Governor%20Asa%20Hutchinson%20\(6.22.21\).pdf](https://www.judiciary.senate.gov/imo/media/doc/Statement%20for%20the%20Record%20from%20Governor%20Asa%20Hutchinson%20(6.22.21).pdf)

We strongly encourage you to include the EQUAL Act in the consolidated appropriations legislation that will be considered by Congress by Friday, March 11.

If you have any questions, please contact Jason Pye of the Due Process Institute at Jason@iDueProcess.org or (202) 558-6686 or Frank Russo of the National District Attorneys Association at Frusso@NDAAJustice.org or (678) 708-6777.

Sincerely,

Americans for Tax Reform
Digital Liberty
Due Process Institute
FAMM
Faith and Freedom Coalition
Justice Action Network
Major Cities Chiefs Association
National District Attorneys Association
Pegasus Institute
R Street Institute