

February 15, 2023

Office of Senator Dick Durbin
135 Hart Senate Office Building
120 Constitution Ave NE
Washington, DC 20002

Office of Senator Lindsay Graham
290 Russell Senate Office Building
120 Constitution Ave NE
Washington, DC 20002

Dear Chairman Durbin and Ranking Member Graham,

Inconsistent federal approaches for crack cocaine and powder cocaine undermine proportional sentencing and deepen overincarceration in underprivileged communities. Our faith organizations request your offices build on your historic partnership on criminal justice reform and work to swiftly pass the EQUAL Act and eliminate the federal crack cocaine disparity.

In the Anti-Drug Abuse Act of 1986, Congress enacted unequal approaches to crack cocaine and powder cocaine despite these stimulant drugs being nearly identical chemically and comparable in “physiological and psychoactive effects.”¹ Under this law, distributing five grams of crack cocaine warranted the same mandatory minimum punishments as distributing 500 grams of powder cocaine.² The bipartisan Fair Sentencing Act of 2010 lessened this “100:1” disparity, but it stands at 18:1 today.³ Crack cocaine has historically been more widely used in marginalized communities of color, which also experience more punitive responses to crime and substance abuse.⁴ As a result, these enhanced mandatory minimums gravely impacted Black Americans. In FY2019, 81% of defendants convicted of federal crack cocaine distribution charges were Black.⁵ In only four years following the enactment of the disparity, the “average federal drug sentence for Black defendants was 49 percent higher.”⁶

As faith leaders, we believe that punishments for crime honor justice when they are governed by consistency and proportionality to the harm done. The federal crack cocaine disparity does not reflect these values. In recent years, faith leaders in the United States have been convicted of their biblical mandate to “seek justice, correct oppression” (Isaiah 1:17) by challenging racial imbalances within our pews and across our culture.⁷ The federal crack cocaine disparity fails to

¹ H.R. Rep No. 111-670 (2010); Dorothy K Hatsukami & Marian W Fischman, *Crack Cocaine and Cocaine Hydrochloride Are the Differences Myth or Reality?*, JAMA Network (Nov. 1996), <https://jamanetwork.com/journals/jama/article-abstract/410806>.

² H.R. Rep No. 111-670, at 2-3 (2010).

³ Fair Sentencing Act of 2010, Pub. L. 111–220, 111th Cong. (2010).

⁴ Results obtained by calculated data obtained from: Federal Bureau of Investigation, *Crime in the U.S., 2019: Table 43A- Arrests by Race and Ethnicity*, U.S. Department of Justice (2020), <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-43>; Joseph J. Palamar, et al., *Powder Cocaine and Crack Use in the United States: An Examination of Risk for Arrest and Socioeconomic Disparities in Use*, 149 *Drug and Alcohol Dependence* 108 (April 2015), <https://www.sciencedirect.com/science/article/abs/pii/S0376871615000496?via%3Dihub>.

⁵ USSC, *Quick Facts: Crack Cocaine Trafficking Offenses*, The United States Sentencing Commission (June 2020), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Crack_Cocaine_FY19.pdf.

⁶ Kevin Ring & Heather Rice-Minus, *Why Do We Still Punish Crack and Powder Cocaine Offenses Differently?*, The Hill (March 3, 2021), <https://thehill.com/opinion/criminal-justice/540816-why-do-we-still-punish-crack-and-powder-cocaine-offenses-differently>.

⁷ Prison Fellowship, *New Coalition of Christian Groups Announce the Prayer & Action Justice Initiative to Advocate for Reform*, Prison Fellowship (August 2020), <https://www.prisonfellowship.org/2020/08/christian-groups-announce-prayer-and-action-justice-initiative/>.

provide clear and compelling public safety benefits while also contributing to overincarceration among Black Americans and its downstream negative consequences. By swiftly passing the EQUAL Act, you and your colleagues can remove a manifest injustice in our laws.

The EQUAL Act would correct an inconsistent penalty by ensuring that the same amounts of crack and powder cocaine trigger the same federal mandatory minimums. Additionally, it allows for careful, individualized review by federal courts of incarcerated individuals sentenced under previous laws. Repealing the federal crack cocaine disparity aligns with your charge to keep our communities safe. More than forty states do not treat these two drugs differently in their sentencing schemes.⁸ Reformed penalties for crack cocaine have not reduced federal defendants' cooperation with law enforcement or led to an increase in crack cocaine use.⁹ By reducing federal overincarceration, the Equal Act can unlock savings for investments for crime victims, drug treatment, and community-based responses to deadly violence.¹⁰

Proportional, consistent punishments governed by “honest weights and scales” (Proverbs 16:11) honor human dignity and advance justice. We implore you and your colleagues to swiftly repeal the federal crack cocaine disparity.

Catholic Charities USA
Catholic Prison Ministry Coalition
Center for Public Justice
Ethics and Religious Liberty Commission
Jesuit Conference Office of Justice and Ecology
National Association of Evangelicals
National Hispanic Christian Leadership Conference
National Latino Evangelical Coalition
Prison Fellowship

⁸ FAMM, *Crack Cocaine Disparity in the States*, Families for Justice Reform, (February, 17 2021), <https://famm.org/wp-content/uploads/Crack-Disparity-in-the-States.pdf>.

⁹ USSC, *2015 Report to the Congress: Impact of the Fair Sentencing Act of 2010*, The United States Sentencing Commission (August 2015), https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200205-rtc-cocaine-sentencing-policy/200205_Cocaine_and_Federal_Sentencing_Policy.pdf; SAMHSA, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2019 National Survey on Drug Use and Health*, Substance Abuse and Mental Health Services Administration (2020), <https://www.samhsa.gov/data/sites/default/files/reports/rpt29393/2019NSDUHFFRPDFWHTML/2019NSDUHFFR1PDFW090120.pdf>.

¹⁰ Thomas Abt, *BLEEDING OUT: THE DEVASTATING CONSEQUENCES OF URBAN VIOLENCE—AND A BOLD NEW PLAN FOR PEACE IN THE STREETS* (Basic Books, 2019).