

“Myth-Buster”



Crack cocaine and powder cocaine are nearly chemically identical drugs with similar effects. But in 1986, Congress established unequal approaches in federal law for these substances. Up until the Fair Sentencing Act of 2010, distributing five grams of crack cocaine and 500 grams of powder cocaine received the same mandatory minimum punishment. The bipartisan EQUAL Act (S. 79 | H.R. 1693) (not to be confused with the Equality Act) would end inconsistent treatment of crack cocaine and powder cocaine in federal sentencing. This sentencing reform has attracted broad support, including from Prison Fellowship, National District Attorneys Association, FAMM, Americans for Prosperity, Justice Action Network, and American Civil Liberties Union.

As this legislation proceeds, the following misconceptions about crack cocaine and crack cocaine crimes may emerge. This “myth-buster” document from Prison Fellowship seeks to offer clear answers to these concerns.

MYTH:

The federal crack cocaine disparity successfully reduces crack cocaine distribution and use.

REALITY

- Research indicates harsher federal penalties for crack cocaine instituted in the Anti-Drug Abuse Act of 1986 have not been demonstrated to reduce use of crack cocaine, have “a deterrent effect on cocaine trafficking,” or lead to a “reduction in the supply of cocaine.”¹ In fact, “the price of crack cocaine remained relatively stable between 1988 and 2000, at \$88 per gram and \$83 per gram, respectively.”²
- Enhanced federal penalties for crack cocaine have primarily impacted street-level dealers and other less significant actors, who are often easily replaceable in drug distribution networks. Thus enhanced mandatory minimums for these individuals fail to meaningfully disrupt distribution schemes.³
- The federal crack cocaine disparity is an outlier among American criminal justice systems; more than 40 states do not have diverging penalty schemes in their efforts to keep communities safe and limit substance abuse.⁴

MYTH:

Crack cocaine is more likely than powder cocaine to cause violence.

REALITY

- Crack cocaine use is not a predictor of violence. “Differences [between violence of crack and powder cocaine users] were almost uniformly statistically nonsignificant when demographic, mood and non-cocaine substance use disorders were controlled for.”⁵
- Violence associated with crack cocaine in the 1980’s was caused by the abrupt expansion of drug markets in impoverished, predominantly Black communities and corresponding violent conflict between sellers. In the 1990s, there was a dramatic reduction in urban violence as drug purchases were conducted privately away from volatile street markets, economic growth provided opportunity for at-risk youth, and law enforcement targeted illegal gun possession.⁶ The recent homicide spike in American cities during COVID-19 requires bold policy remedies; however contemporary urban violence is less connected to volatility in drug and crack cocaine markets.⁷

¹ Lauryn Saxe Walker & Briana Mezuk, *Mandatory Minimum Sentencing Policies and Cocaine Use in the U.S., 1985–2013*, National Institute of Health (November 29, 2018); USSC, Report to the Congress: *Cocaine and Federal Sentencing Policy*, The United States Sentencing Commission (May 2002).

² USSC, supra note 1 at 66.

³ (Because crack cocaine is easily made by dissolving power cocaine in baking soda and water, it is often made by “street level dealers” and less significant actors in drug networks. Under current federal law, however, an individual distributing 29 grams of crack cocaine would face a potential five-year mandatory minimum not applied to an individual distributing 499 grams of powder cocaine, the basic ingredient behind crack cocaine.) USSC, 2015 Report to the Congress: *Impact of the Fair Sentencing Act of 2010*, The United States Sentencing Commission (August 2015), *Cocaine and Federal Sentencing Policy*; Pew, *Federal Drug Sentencing Laws Bring High Cost, Low Return*, The Pew Charitable Trusts (August 2015).

⁴ FAMM, *Crack-Cocaine Disparity Reform in the States*, Families for Justice Reform, (February 2021).

⁵ Michael G Vaughn, et al., *Is Crack Cocaine Use Associated with Greater Violence than Powdered Cocaine Use? Results from a National Sample*, American Journal of Drug and Alcohol Abuse (July 2010).

⁶ Alfred Blumstein, *The Notorious 100:1 Crack: Powder Disparity—The Data Tell Us that It Is Time to Restore the Balance*, Federal Sentencing Reporter (October 2003).

⁷ Thomas Abt, *BLEEDING OUT: THE DEVASTATING CONSEQUENCES OF URBAN VIOLENCE—AND A BOLD NEW PLAN FOR PEACE IN THE STREETS* (Basic Books, 2019).

MYTH:

Without the crack cocaine disparity, prosecutors will be left without tools to hold perpetrators accountable for violent crimes.

REALITY

- In FY2019, 1,565 individuals were convicted of federal crack cocaine distribution offenses (compared to over 10 million arrests made in 2019).⁸ Federal, state, and local law enforcement are not depending on federal crack cocaine prosecutions to keep our communities safe.
- Federal sentencing code and guidelines provide multiple tools to hold individuals involved in violence and drug trafficking accountable.⁹ Crack cocaine distribution would remain subject to federal prosecution after the end of the crack cocaine disparity.
- Violent crime is a serious problem that demands accountability. We should pursue focused actions against such conduct and not rely on indirect and disproportionate penalties that increase overincarceration and racial disparities in our justice system.¹⁰

MYTH:

It would be unwise to eliminate the federal crack cocaine disparity during the opioid crisis.

REALITY

The opioid crisis requires a bold response on both supply and demand sides from policymakers, law enforcement, and public health systems. It should not slow our progress in reducing disproportionate, ineffective, and inconsistent penalties for other drugs. By passing legislation like the Comprehensive Addiction and Recovery Act and the Support for Patients and Communities Act, federal policymakers recognized an exhausted “tough on crime” era playbook could not answer the opioid crisis.¹⁵ Now more than ever, we must acknowledge and set aside past missteps in approaching crime and substance abuse.

MYTH:

Crack cocaine is more addictive than powder cocaine.

REALITY

Although there is some evidence that certain methods of cocaine administration can increase addiction-related risks, one form of the drug is not more addictive than another.¹¹ As stated by the United States Sentencing Commission, “crack cocaine and powder cocaine are both powerful stimulants, and both forms of cocaine cause identical effects.”¹² Method of use by itself is not determinative of cocaine addiction; other factors include “frequency and amount of cocaine used,” drug price and accessibility, existing mental health concerns, or a dependency on marijuana, alcohol, or opioids.¹³ Additionally, the user population of crack cocaine is marked by exceptionally “high socio-economic marginalization” compared to other drug users, contributing to greater disengagement from resources and services needed to prevent and treat addiction.¹⁴ Ultimately, precisely quantifying the difference in the method of use or the many other factors linked to addiction risks to determine the appropriate punishment for crack cocaine compared to powder cocaine is next to impossible.

⁸ USSC, [Quick Facts: Crack Cocaine Trafficking Offenses](#), The United States Sentencing Commission (June 2020); FBI, [Crime in the U.S., 2019: Persons Arrested](#), Department of Justice (2020).

⁹ CRS, [How the Federal Sentencing Guidelines Work: An Overview](#), Congressional Research Services (July 2015); CRS, [Mandatory Minimums for Federal Drug Offenses](#), Congressional Research Service (January 2018).

¹⁰ Blumstein, *supra* note 6 at 90.

¹¹ (There is evidence that certain methods of cocaine administration rather than form of cocaine, such as smoking (more prevalent with crack cocaine) or injection (rare but more prevalent with powder cocaine) can increase frequency of cocaine use and consequent addiction risks because of a user’s possible desire to repeat more immediate, shorter and intense “highs.”) USSC, [Report to the Congress: Cocaine and Federal Sentencing Policy](#), The United States Sentencing Commission (May 2007).

¹² *Id.* at 62.

¹³ Russel S. Falck, et al, [Among Long-Term Crack Smokers, Who Avoids and Who Succumbs to Cocaine Addiction?](#), Journal of Drug and Alcohol Abuse (November 2008); Dorothy K Hatsukami & Marian W Fishman, [Crack Cocaine and Cocaine Hydrochloride Are the Differences Myth or Reality?](#), JAMA Network (Nov. 1996).

¹⁴ Ainslie J Butler, et al., [Health Outcomes Associated with Crack-Cocaine Use: Systematic Review and Meta-analyses](#), Drug and Alcohol Dependence (November 2017).

¹⁵ Comprehensive Addiction and Recovery Act of 2016, P.L. 114-198, 114th Congress (2016); SUPPORT for Patients and Communities Act P.L. 115-271, 115th Congress (2018).