
BACKGROUND:

In the Anti-Drug Abuse Act of 1986, Congress enacted unequal approaches to crack cocaine and powder cocaine crimes -- even though these stimulant drugs are nearly identical chemically and comparable in “physiological and psychoactive effects.”¹ Under this law, distribution of five grams of crack cocaine warranted the same mandatory minimum punishments as distribution of 500 grams of powder cocaine, a 100:1 disparity.² Although the bipartisan Fair Sentencing Act of 2010 lessened this disparity, it remains at 18:1 today.³ Crack cocaine is more widely used in marginalized communities of color, which also experience more punitive approaches to crime and substance abuse.⁴ The difference in how the federal government approaches crack cocaine and powder cocaine crimes continues to gravely impact Black Americans. In FY2019, 81% of defendants convicted of federal crack cocaine distribution charges were Black.⁵ Congress should advance proportional punishment, racial equity, and public safety by ending the disparity between crack cocaine and powder cocaine offenses.

WHY IT MATTERS:

- Punishment for crime honors justice and human dignity when it is proportional to the harm committed, consistent, and governed by “honest weights” (Proverbs 16:11). Conflicting approaches in federal sentencing for crack and powder cocaine do not reflect these values and erode public trust in the rule of law.
- Inconsistent federal treatment of crack and powder cocaine crimes contribute to disparate experiences by Black and white Americans of the criminal justice system. Thanks in part to the federal crack cocaine disparity, in FY2010, the average sentence for Black Americans convicted of federal drug charges was 65.5% higher than that for white Americans.⁶ From 1994 to 2014, “Black and

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 USSC, *Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System*, The United States Sentencing Commission (October 2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171025_Drug-Mand-Min.pdf.

Hispanic people [accounted] for 75 percent of the growth of the federal prison population.”⁷

- The mandatory minimums of the Anti-Drug Abuse Act of 1986 were intended to incapacitate “kingpins” and “middle level dealers.”⁸ However, the U.S. Sentencing Commission (USSC) concluded that the laws primarily impacted “lower-level dealers.”⁹
- The federal crack cocaine disparity is an outlier among American criminal justice systems; more than forty states do not have diverging penalty schemes.¹⁰
- Research casts doubts on claims originally used to justify acute the federal crack cocaine disparity. Differences in violent conduct between users of crack and powder cocaine are “uniformly statistically nonsignificant when demographic, mood and non-cocaine substance use disorders were controlled for.”¹¹ The USSC found that “prenatal exposure to crack cocaine and powder cocaine produces similar types and degrees of negative effects.”¹²
- Reformed penalties for crack cocaine have not led to an increase in crack cocaine use.¹³ Individuals whose cases were reevaluated under more proportional crack cocaine sentencing had nearly identical recidivism rates to comparable prisoners with longer sentences.¹⁴

⁷ Cybele Kotonias, et al., *Charting a Path Forward for Federal Corrections Reform*, The Urban Institute (August 2016), <https://apps.urban.org/features/corrections-reform/>.

⁸ “Anti-Drug Abuse Act of 1986 (H.R. 5484).” *Congressional Record* 132:19 (September 30, 1986) p. 27193. Available from <https://www.govinfo.gov/app/details/GPO-CRECB-1986-pt19/GPO-CRECB-1986-pt19-2-2/context>.

⁹ USSC, *Report to the Congress: Cocaine and Federal Sentencing Policy*, The United States Sentencing Commission (May 2007), https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200705_RtC_Cocaine_Sentencing_Policy.pdf.

¹⁰ FAMM, *Crack Cocaine Disparity in Iowa*, Families for Justice Reform, (February, 17 2021), <https://famm.org/wp-content/uploads/Crack-Disparity-in-the-States.pdf>.

¹¹ Michael G. Vaughn, et al., *Is Crack Cocaine Use Associated with Greater Violence than Powdered Cocaine Use? Results from a National Sample*, 36 *American Journal of Drug & Alcohol Abuse* 181 (2010), <https://www.tandfonline.com/doi/full/10.3109/00952990.2010.491877>.

¹² USSC, *supra* note 9 at 68.

¹³ 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>.

¹⁴ USSC, *Retroactivity & Recidivism: The Drugs Minus Two Amendment*, United States Sentencing Commission (July 2020), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20rET200708_Recidivism-Drugs-Minus-Two.pdf; USSC, *Recidivism Among Offenders Receiving Sentencing Reductions; The 2007 Crack Cocaine Amendment*, USSC (May 2014), <https://www.ussc.gov/research/research-publications/recidivism-among-offenders-receiving-retroactive-sentence-reductions-2007-crack-cocaine-amendment>.