

Testimony for the Record
Prison Fellowship
Before the Senate Judiciary Committee Hearing on Examining Federal Sentencing for Crack
and Powder Cocaine
June 23, 2021

Prison Fellowship® is the nation's largest Christian nonprofit serving prisoners, former prisoners, and their families, and a leading advocate for criminal justice reform. The organization was founded in 1976 by Charles Colson, a former aide to President Nixon who served a seven-month sentence for a Watergate-related crime. For over 40 years, Prison Fellowship has shared hope and purpose with men and women in prison. Those who once broke the law are transformed and mobilized to serve their community, replacing the cycle of crime with a cycle of renewal.

Our prison events, classes, and programs reached more than 255,000 prisoners, and more than 300,000 children of incarcerated parents in 2019. This important work is made possible by nearly 240,000 Prison Fellowship volunteers across the United States. One hundred and thirty federal prisons participate in our Angel Tree program and several federal prisons have Prison Fellowship connection classes, which include Bible studies, recovery groups, and seminars on topics from marriage, anger management, and more.

Located in 126 prisons in 31 states, the Prison Fellowship Academy is the organization's most intensive in-prison program, taking men and women through a voluntary, holistic life transformation spanning months, where they are mentored by Prison Fellowship staff and volunteers to lead lives of purpose and productivity inside and outside of prison. The Prison Fellowship Academy and other faith-based classes are currently funded entirely through the generosity of private donors and foundations. Studies from Baylor University and Minnesota Department of Corrections document that the more intensive versions of the Academy curriculum lead to substantial improvements in post-release outcomes.¹

Understanding the Powder Cocaine and Crack Cocaine Disparity

Understanding drug crime is essential to ensuring that federal sentencing is proportional and effective. Drug addiction and substance abuse have steep costs to families and communities. As a result, drug distribution crimes demand accountability, including through incarceration where appropriate. Too often federal penalties for drug crime have been unduly harsh, have failed to meaningfully curb substance abuse and drug distribution, and have diverted essential resources away from valuable crime control strategies.²

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."³ Under this law, distribution of five grams of crack cocaine warranted the same mandatory minimum penalties as distribution of 500 grams of

¹ Bryon Johnson & David Larson, *The InnerChange Freedom Initiative: A Preliminary Evaluation of a Faith-Based Prison Program*, Baylor University (2008), <https://www.baylor.edu/content/services/document.php/25903.pdf>; Grant Duwe, *Can Faith-Based Correctional Programs Work?: An Outcome Evaluation of the InnerChange Freedom Initiative in Minnesota*, National Institute of Health (2013), <https://www.ncbi.nlm.nih.gov/pubmed/22436731>.

² Pew, *Federal Drug Sentencing Laws Bring High Cost, Low Return*, The Pew Charitable Trusts (August 2015), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/08/federal-drug-sentencing-laws-bring-high-cost-low-return>.

³ 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>.

powder cocaine, a 100:1 disparity.⁴ Although the bipartisan Fair Sentencing Act of 2010 lessened this disparity, it remains at 18:1 today.⁵

The inconsistent treatment of crack and powder cocaine crimes in federal criminal code exemplifies this ineffective and unjust approach to drug crime. We urge this Committee to swiftly remedy this by passing the bipartisan, bicameral EQUAL Act (S. 79 | H.R. 1693).

The Crack Cocaine Disparity and Proportional Punishment

Punishment for crime honors justice and human dignity when it is proportional to the harm committed, consistent, and governed by “honest weights” (Proverbs 11:1). Conflicting approaches in federal sentencing for crack and powder cocaine, which are essentially two forms of the same drug, do not reflect these values and erode public trust in the rule of law. Unduly lengthy and inconsistent penalties for federal crack cocaine crimes are ineffective in deterring drug distribution, diminish vital trust in law enforcement, contribute to increased federal prison costs, and have particularly harmful impacts on Black Americans. If passed, the EQUAL Act would continue to hold individuals convicted of federal crack cocaine offenses accountable for their misconduct—but in a manner that better fits the crime.

Should Congress pursue an end to the federal crack cocaine disparity, that this change ought to allow for retroactive review of prior cases sentenced under the previous laws. It would be a grave error to recognize that the current method for sentencing of federal crack cocaine crimes is unjust, disproportional, and ineffective, but decline to offer any prospect of individualized sentencing relief for men and women in federal prisons now experiencing those very same penalties.

The Crack Cocaine Disparity and Public Safety

Repealing the federal crack cocaine disparity aligns with this Committee’s charge to keep American communities safe. In fact, reformed federal penalties for crack cocaine have not reduced federal defendants’ cooperation with law enforcement or led to an increase in crack cocaine use.⁶ As pointed out by numerous law enforcement leaders, eliminating this disparity would increase public confidence in law enforcement, prosecutors, and the courts that is needed to secure community support and cooperation in strategies for reducing crime.⁷ More than forty states do not treat crack and powder cocaine differently in their sentencing schemes.⁸ Of the remaining nine states, two only use the

⁴ H.R Rep No. 111-670, at 2-3 (2010).

⁵ Fair Sentencing Act of 2010, Pub. L. 111–220, 111th Cong. (2010).

⁶ 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/rpt29393/2019NSDUHFFR1PD12019NSDUHFFR1PD120FW090120.pdf>.

⁷ NDAA, *Nation’s Largest Prosecutor Organization Endorses Ending the Disparity in Sentencing Between Crack and Powder Cocaine*, National District Attorneys Association (February 24, 2021), <https://ndaa.org/wp-content/uploads/NDAA-Press-Release-on-EQUAL-Act.pdf>; *Hearing on Examining Federal Sentencing for Crack and Powder Cocaine*, 117th Cong. (June 22, 2021) (Statement of Russell Coleman before the Senate Judiciary Committee)

<https://www.judiciary.senate.gov/imo/media/doc/Statement%20for%20the%20Record%20from%20Russell%20Coleman%206.21.21.pdf>; *Hearing on Examining Federal Sentencing for Crack and Powder Cocaine*, 117th Cong. (June 22, 2021) (Statement of the Honorable Asa Hutchinson Governor of Arkansas before the Senate Judiciary Committee) [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).

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

disparity for the purposes of establishing the mandatory maximum sentence, six have a disparity below 10:1, and seven have a disparity lower than the federal one.⁹

By reducing federal overincarceration, the Equal Act can unlock savings for innovative approaches to public safety across the Department of Justice. These include the following:

- **Correctional programming.** Correctional leaders have developed a toolbox of interventions, such as Cognitive Behavioral Therapy, education, and employment opportunities within prison or on work release, that reduce recidivism, help prisoners confront negative thinking and behavior, and prepare for a successful return home.¹⁰
- **Robust police forces.** Increasing the number of police officers is a valuable intervention for keeping communities safe and reducing violent crime. Cities that benefited from increased officer hiring in 2009 saw crime decline by 3.5 percent; another study found that every additional dollar spent on police in 2010 generated \$1.63 in cost savings for victims.¹¹ Increasing the number of officers would also reduce the pressure on departments to assign longer or back-to-back shifts for officers, which have been associated with increased officer fatigue, use of force incidents, and civilian complaints.¹²
- **Effective strategies for deadly violence.** Focused deterrence strategies draw on community, law enforcement, and social service partnerships to intervene with individuals most likely to commit deadly violence and provide a combination of anticipated sanctions or benefits should they pursue or reject this conduct.¹³ These partnerships have contributed to declines in homicides in Boston, Chicago, Stockton, Indianapolis, New Orleans, Kansas City, and elsewhere.¹⁴ Redirection of federal dollars to these life-saving interventions could not be more timely, as American cities grapple with increases in deadly violence.¹⁵

It may be argued that the federal crack cocaine disparity is needed to effectively deter and incapacitate individuals involved in both drug distribution and violent crime. While rooted in rightful concern for the safety of our communities, this claim does not account for the many tools available to federal law enforcement after passage of the EQUAL Act. For one, crack cocaine distribution would remain subject to federal prosecution after the end of the crack cocaine disparity. Federal sentencing code and guidelines provide multiple tools to hold individuals involved in violence and drug trafficking

⁹ *Id.*

¹⁰ Grant Duwe, *The Use and Impact of Correctional Programming for Inmates on Pre- and Post-Release Outcomes*, National Institute of Justice (June 2017), <https://www.ncjrs.gov/pdffiles1/nij/250476.pdf>

¹¹ Steven Mello, *More COPS, Less Crime*, Princeton University (February 2018), <https://www.princeton.edu/~smello/papers/cops.pdf>; Aaron Chalfin & Justin McCrary, *Are U.S. Cities Underpoliced? Theory and Evidence*, 100 *The Review of Economics and Statistics* 1 (March 2018), <https://direct.mit.edu/rest/article/100/1/167/58429/Are-U-S-Cities-Underpoliced-Theory-and-Evidence>.

¹² Justin Anderson, et al., *King County Sheriff's Office Overtime: Better Strategy Could Reduce Hidden Costs and Safety Risks*, King County Auditor's Office (June 2017), <https://journals.sagepub.com/doi/abs/10.1177/1098611115584910?journalCode=pqxa>; <https://kingcounty.gov/~media/depts/auditor/new-web-docs/2017/kcao-overtime-2017/kcao-overtime-2017.ashx?la=en>; Leonard Bell, et al., *Effects of 13-Hour 20-Minute Work Shifts on Law Enforcement Officers' Sleep, Cognitive Abilities, Health, Quality of Life, and Work Performance: The Phoenix Study*, 18 *Police Quarterly* 3 (Sept. 2015), <https://academic.oup.com/sleep/article/42/3/zsy231/5195409?login=true>

¹³ Anthony Braga & David Kennedy, *A FRAMEWORK FOR ADDRESSING VIOLENCE AND SERIOUS CRIME*, *Elements in Criminology* (March 2021), http://services.cambridge.org/us/academic/subjects/sociology/criminology/framework-addressing-violence-and-serious-crime-focused-deterrence-legitimacy-and-prevention?site_view=desktop.

¹⁴ Anthony A. Braga, et al., *Focused Deterrence Strategies Effects on Crime: A Systematic Review*, 15 *Campbell Systemic Reviews* 3 (September 2019), <https://onlinelibrary.wiley.com/doi/full/10.1002/cl2.1051>.

¹⁵ Richard Rosenfeld, et al., *Pandemic, Unrest, and Crime in U.S. Cities: 2020 Year-End Update*, Council on Criminal Justice, January 2021, https://cdn.ymaws.com/counciloncj.org/resource/resmgr/covid_commission/Year_End_Crime_Update_Design.pdf.

accountable.¹⁶ Passage of the EQUAL Act would not deny federal law enforcement access to these mechanisms, which are tied to the most concerning, troubling conduct at hand, do not make distinctions based on the type of cocaine involved, and avoid the harms to community legitimacy and public trust the crack cocaine disparity engenders.

Federal courts are familiar with individualized considerations of sentencing retroactivity due to the First Step Act and prior guideline changes by the United States Sentencing Commission. Courts have the experience to make careful judgements about retroactivity based on the underlying offense, history and characteristics of the defendant, and public safety concerns. In three distinct studies, the Sentencing Commission found comparable recidivism rates between prisoners resentenced under more proportional sentencing for crack cocaine crime and those with lengthier terms of incarceration.¹⁷

The Crack Cocaine Disparity and Unjust Racial Impacts

While inconsistent federal penalties for two comparable substances fail to serve all Americans, the difference in how the federal government approaches crack cocaine and powder cocaine crimes gravely impacts Black Americans. Crack cocaine is more widely used in marginalized communities of color, which also experience more punitive approaches to crime and substance abuse.¹⁸ In FY2019, 81% of defendants convicted of federal crack cocaine distribution charges were Black.¹⁹ 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.²⁰ From 1994 to 2014, “Black and Hispanic people [accounted] for 75 percent of the growth of the federal prison population.”²¹ In only four years following the enactment of the disparity, the “average federal drug sentence for Black defendants was 49 percent higher.”²² The costs of unduly long crack-related sentences have significant negative impacts on families, including decreased income, educational achievement, and long-term stability.

Prison Fellowship recognize that these disparities are complex, multicausal, reflect cultural, economic, and historic factors within and outside the justice system, and cannot easily be remedied

¹⁶ CRS, *How the Federal Sentencing Guidelines Work: An Overview*, Congressional Research Services (July 2015), https://www.everycrsreport.com/files/20150702_R41696_74e925e91d8d0a1c51f03a39a75857afdae7b1c5.pdf; CRS, *Mandatory Minimums for Federal Drug Offenses*, Congressional Research Service (January 2018), https://www.everycrsreport.com/files/20180111_R45074_32258e3b09188ca2d21dcdf115051e2c9ff0d020.pdf.

¹⁷ USSC, *Retroactivity & Recidivism: The Drugs Minus Two Amendment*, United States Sentencing Commission (July 2020), https://www.uscc.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*, United States Sentencing Commission (May 2014), <https://www.uscc.gov/research/research-publications/recidivism-among-offenders-receiving-retroactive-sentence-reductions-2007-crack-cocaine-amendment>.

¹⁸ 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>.

¹⁹ USSC, *Quick Facts: Crack Cocaine Trafficking Offenses*, United States Sentencing Commission (June 2020), https://www.uscc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Crack_Cocaine_FY19.pdf.

²⁰ USSC, *Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System*, United States Sentencing Commission (October 2017), https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171025_Drug-Mand-Min.pdf.

²¹ Cybele Kotonias, et al., *Charting a Path Forward for Federal Corrections Reform*, The Urban Institute (August 2016), <https://apps.urban.org/features/corrections-reform/>.

²² 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>.

with a singular policy change. However, the federal crack cocaine disparity is a clear example of a federal law that has significant, negative impacts particularly among Black Americans without providing clear and compelling public safety benefits. Passage of the EQUAL Act presents this committee with an opportunity to acknowledge the God-given dignity and value of every person, reduce unjust racial disparities in the administration of justice, and build the common ground required to tackle more complex policy debates in criminal justice and policing.

Conclusion

This Committee has established a strong record of policymaking that honors the human dignity of all those impacted by crime and incarceration. Continued injustices and inefficiencies in our system of laws, however, should spur this Committee to double its efforts. Without grounding in science or evidence, unduly harsh penalties for federal crack cocaine crimes are ineffective in deterring drug distribution, diminish vital trust in law enforcement, contribute to increased federal prison costs, and have particularly harmful impacts on Black Americans. We urge this Committee to promptly mark up and pass the EQUAL Act.