



POLICY BRIEF ON **EQUAL ACT**

DECEMBER 2024

POLICY
ADVOCACY
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I What is the EQUAL Act?

The Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act (S. 524, H.R.1062) is a bipartisan bill that would eliminate the 18-to-1 federal sentencing disparity between crack and powder cocaine and authorize the resentencing of people convicted of crack cocaine offenses.¹ If enacted, the bill would eliminate the lower quantity thresholds for crack cocaine offenses for pending and future cases and would apply the same statutory criminal penalties for equivalent crack and powder cocaine quantities under several sections of the United States Sentencing Guidelines.²

II Brief History of Crack and Powder Cocaine Sentencing Disparity

Cocaine was first regulated and taxed by the Harrison Narcotics Tax Act of 1914, which banned the non-medical use of cocaine and was signed into law by President Woodrow Wilson.³ In 1970, President Richard Nixon signed the Controlled Substances Act into law, which made the unauthorized possession of cocaine a crime.⁴ Under President Ronald Reagan, the Anti-Drug Abuse Act of 1986 passed, establishing mandatory minimum prison sentences for crack and powder cocaine and treating crack cocaine much more harshly under the law, imposing the same sentence for five gram of crack cocaine as it did for 500 grams of powder cocaine.⁵ Two years later, the Anti-Drug Abuse Act of 1988 harshened the penalties for cocaine and made crack cocaine the only drug under federal law with a five year mandatory minimum sentence for a first time offense of simple possession.⁶

In the 2000s, several bipartisan proposals to address the sentencing disparity between crack and powder cocaine were considered but ultimately failed, including the Republican-led Drug Sentencing Reform Act of 2001 that would have reduced the disparity to 20-to-1, and the Democratic-led Drug Sentencing Reform and Cocaine Kingpin Trafficking Act of 2007, which would have eliminated the disparity entirely.⁷ The disparity in sentencing was reduced to 18-to-1 when President Barack Obama signed into law the Fair Sentencing Act of 2010, raising the drug quantity thresholds of crack cocaine for sentencing.⁸ Those higher thresholds for crack cocaine were applied retroactively by the First Step Act of 2018, signed into law by President Donald Trump.⁹

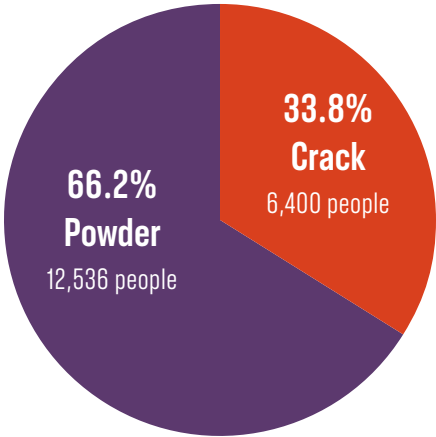
In 2021, the Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act was first introduced by Senators Cory Booker (D-NJ) and Dick Durbin (D-IL) and Representatives Kelly Armstrong (R-ND) and Hakeem Jeffries (D-NY) to eliminate the crack and powder cocaine sentencing disparity and apply higher crack cocaine drug quantity thresholds retroactively.¹⁰ While it passed the House of Representatives on September 28, 2021 with an overwhelming bipartisan majority, 361-66,¹¹ and

attracted 11 Republican and 24 Democratic co-sponsors in the Senate, the EQUAL Act stalled in the Senate. On December 16, 2022, Attorney General Merrick Garland issued a memo to federal prosecutors recommending that they prosecute crack cocaine cases using powder cocaine sentencing guidelines.¹² On February 17, 2023, Congress Member Kelly Armstrong (R-ND) and Hakeem Jeffries (D-NY), along with United States Senator Cory Booker (D-NJ) and Dick Durbin (D-IL), reintroduced the bipartisan EQUAL Act legislation.¹³

III Number of People Incarcerated on Federal Level for Crack and Cocaine Trafficking

As of January 28, 2023, 18,935 people were incarcerated on the federal level for cocaine-trafficking related convictions. Thirty-four percent, or 6,400 people, were incarcerated for crack cocaine, and 66%, or 12,536 people, were incarcerated for powder cocaine (see Figure 1).¹⁴

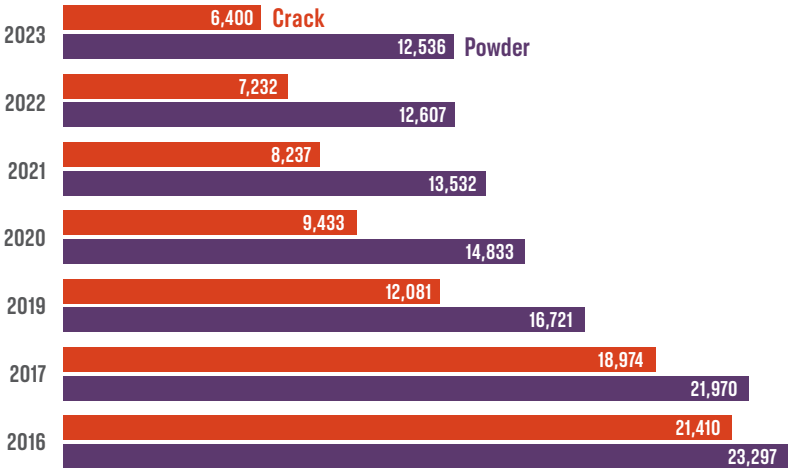
FIGURE 1
Number of People Incarcerated for Crack and Powder Cocaine Trafficking in 2023



U.S. Sentencing Commission, FY 1991–FY 2022 Datafiles, USSCFY91–USSCFY22, Preliminary Data FY 2023, USSCFY23.

The number of people incarcerated on the federal level for crack cocaine has consistently remained below that of powder cocaine. Moreover, the number of people incarcerated for crack has declined faster than incarcerated for powder cocaine. Since FY 2016, the number of people incarcerated for crack cocaine has decreased by 70% while the number of people incarcerated for powder cocaine has decreased by 46% (see Figure 2). Notably, this decrease in crack incarceration appears to be at least in part a result of the First Step Act, which applied retroactively the reduction of the crack-cocaine sentencing disparities (from 100-to-1 to 18-to-1) and allowed for other reductions of sentence lengths, such as through compassionate release.

FIGURE 2
Number of People Incarcerated for Crack Versus Powder Cocaine Trafficking Over Time



Data from U.S. Sentencing Commission, FY 1991 through FY 2022 Datafiles, USSCFY91–USSCFY22, and Preliminary Data from FY 2023, USSCFY23.

IV Convictions and Sentencing on Federal Level for Cocaine Trafficking and Possession¹⁵

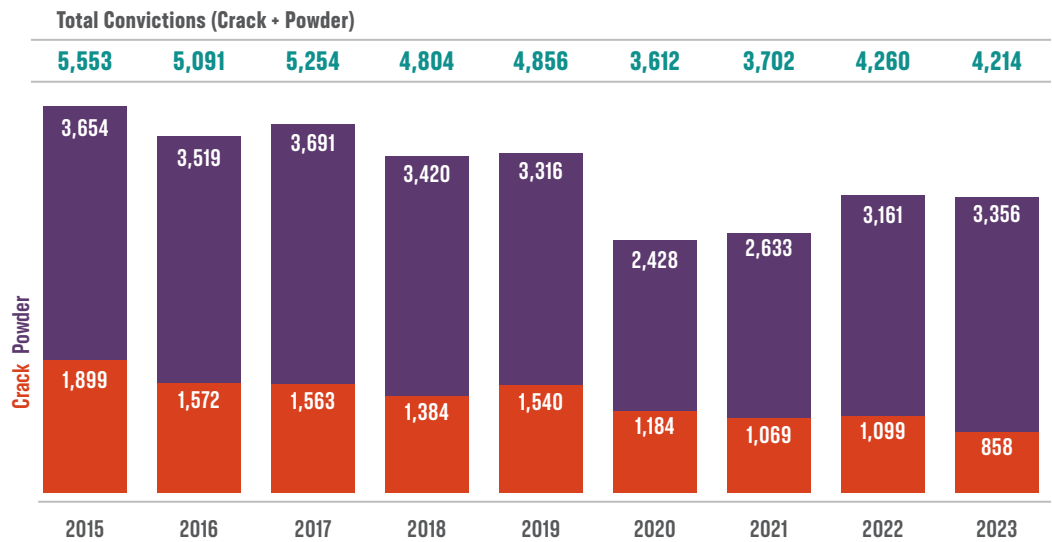
A | Number of People Convicted and Sentenced for Crack and Powder Cocaine

Most recent data from the United States Sentencing Commission indicates that in FY23, 4,214 individuals were convicted and sentenced in federal courts for powder and crack cocaine trafficking and possession offenses, which is a 24% decrease from FY15. As of FY23, the majority of federal cocaine convictions were for powder cocaine, with 20% of total cocaine convictions involving crack, accounting for 858 out of 4,214 cases. Crack cocaine convictions have been steadily decreasing since FY15 and reached below 1,000 convictions for the first time in at least a decade in FY23. Notably, however, since FY20 the number of powder cocaine convictions has been increasing steadily (see Figure 3).

FIGURE 3

Individuals Convicted and Sentenced Crack Versus Powder Cocaine, FY15–FY23

Data from USSC Interactive Data Analyzer, Filters Used: FY: 15,16,17,18,19,20,21,22; Circuit: All; State: All; District: All; Race: All; Age: All; Citizenship: All; Education: All; Crime Type: Drug Possession, Drug Trafficking; Guidelines: §2D1.1, §2D2.1; Drug Type: Powder Cocaine, Crack Cocaine; Criminal History: All; Career Offender Status: All.



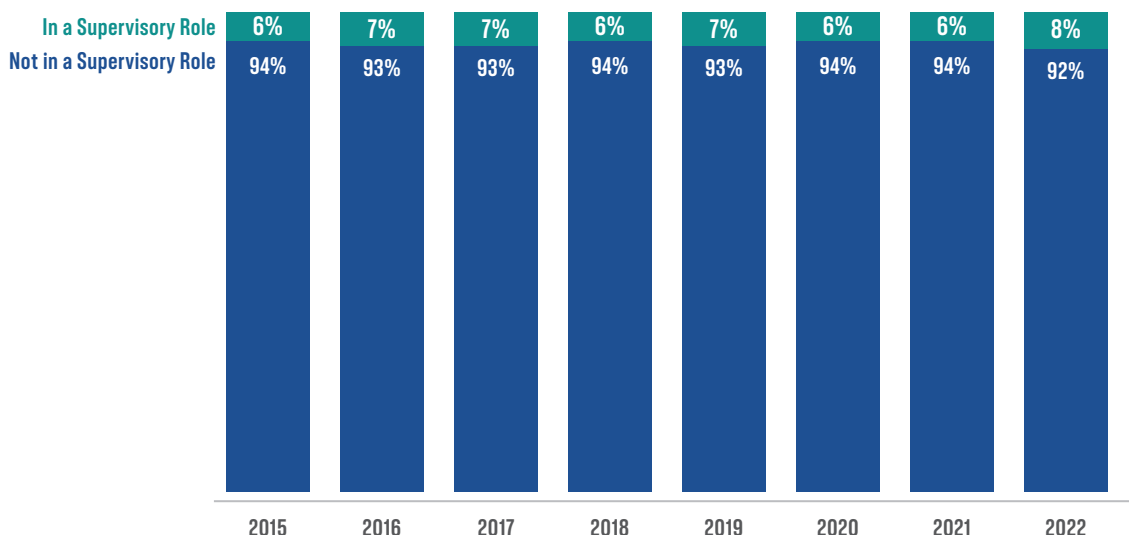
B | Drug Leadership Role of Individuals Convicted and Sentenced for Crack Cocaine Trafficking

When hearing the term “drug trafficking” it may be one’s natural assumption that convictions consist of cartel leaders and those at the top of the drug distribution rings. However, by examining the proportion of individuals in a leadership or supervisory role convicted of crack trafficking, a more complicated story comes to light. The percent of individuals convicted and sentenced who held a leadership role in drug operations was consistently around 6% to 7% from FY15 to FY22, according to data from the United States Sentencing Commission. In contrast, people not

holding a leadership role made up the vast majority of people convicted and sentenced for crack trafficking at more than 90% each year (see Figure 4).

FIGURE 4

Role of Individuals Convicted and Sentenced for Crack Cocaine Trafficking, FY15-FY22



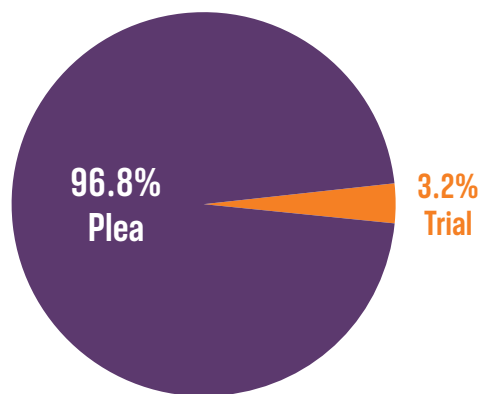
Data from Quick Facts on Federal Offenders in Prison (January 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022) https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Crack_Cocaine_FY22.pdf.

C | Sentences for Crack Cocaine Convictions

The vast majority of people convicted and sentenced for crack cocaine trafficking and possession between FY15 and FY23 were sentenced under a plea deal. Only 3.2% of sentences were a result of a trial (see Figure 5).

FIGURE 5

Guilty Pleas vs Trial for Crack Cocaine Convictions



Data from USSC Interactive Data Analyzer. The figure includes the 12,168 cases reported to the Sentencing Commission. Cases missing information necessary to complete the analysis were excluded from this figure. Filters used: Fiscal Year: 2015,2016,2017,2018,2019,2020,2021,2022,2023; Circuit: All; State: All; District: All; Race: All; Gender: All; Age: All; Citizenship: All; Education: All; Crime Type: Drug Possession,Drug Trafficking; Guideline: §2D1.1,§2D2.1; Drug Type: Crack Cocaine; Sentencing Zone: All; Criminal History: All; Career Offender Status: All.

While the percentage of guilty pleas for crack cocaine-related convictions is slightly lower than the overall percentage of guilty pleas on the federal level, it is a higher percentage than the percentage of guilty pleas for the majority of other categories of crime on the federal level. Seventeen categories of crime have a lower percentage of guilty pleas, and 13 categories have a higher or same percentage (see Table 1).

Once convicted for crack cocaine trafficking, almost all individuals were sentenced to prison time. A small percentage, between 3% to 5.6%, received alternatives to incarceration in the form of community supervision such as probation (see Figure 6).

Prison sentences for crack cocaine trafficking ranged from less than two years (18.2%) to 25 years to life (1.3%). The largest percentage of sentences for crack cocaine trafficking convictions was 5 to 10 years (34.6%) (see Figure 7).

TABLE 1

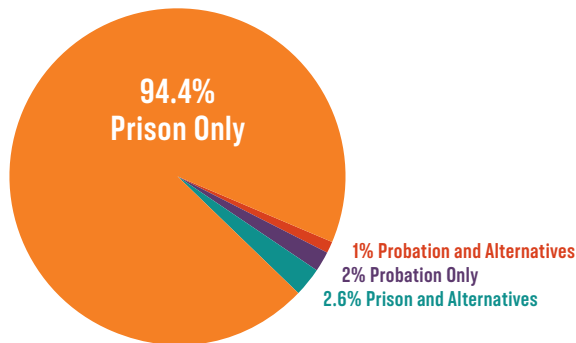
Types of Crime Convictions by Plea vs Trial

CRIME	PLEA		TRIAL	
Administration of Justice	4,221	93.7%	285	6.3%
Antitrust	129	90.2%	14	9.8%
Arson	481	93.0%	36	7.0%
Assault	4,878	93.9%	319	6.1%
Bribery/Corruption	2,030	91.9%	180	8.1%
Burglary/Trespass	467	97.5%	12	2.5%
Child Pornography	8,983	96.8%	296	3.2%
Commercialized Vice	670	97.4%	18	2.6%
Drug Possession	3,786	99.3%	25	0.7%
Drug Trafficking	128,260	97.7%	2,953	2.3%
Environmental	1,137	98.1%	22	1.9%
Extortion/Racketeering	1,094	95.2%	55	4.8%
Firearms	55,073	97.3%	1,536	2.7%
Food and Drug	302	97.4%	8	2.6%
Forgery/Counter/Copyright	1,431	98.6%	21	1.4%
Fraud/Theft/Embezzlement	38,537	95.8%	1,669	4.2%
Immigration	153,490	99.6%	631	0.4%
Individual Rights	467	83.4%	93	16.6%
Kidnapping	641	84.3%	119	15.7%
Manslaughter	441	93.8%	29	6.2%
Money Laundering	7,616	93.3%	548	6.7%
Murder	1,960	78.0%	552	22.0%
National Defense	1,312	95.8%	57	4.2%
Obscenity/Other Sex Offenses	2,447	98.8%	30	1.2%
Prison Offenses	3,615	98.9%	40	1.1%
Robbery	10,117	94.8%	554	5.2%
Sexual Abuse	7,394	90.5%	773	9.5%
Stalking/Harassing	1,428	92.0%	125	8.0%
Tax	3,267	92.9%	251	7.1%
Other	6,119	98.4%	100	1.6%
GRAND TOTAL	451,793	97.5%	11,351	2.5%

Data from USSC Interactive Data Analyzer, Filters Used: Fiscal Year: 2017, 2018, 2019, 2020, 2021, 2022, 2023; Crime Type: All; Guideline: All Circuit: All; State: All; District: All; Race: All; Gender: All; Age: All; Citizenship: All; Education: All; Crime Type: All; Guideline: All; Drug Type: All; Sentencing Zone: All; Criminal History: All; Career Offender Status: All.

FIGURE 6

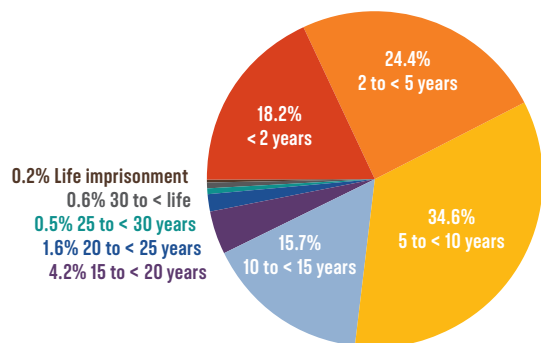
Sentence Types for Sentenced Individuals



Data from USSC Interactive Data Analyzer, Filters Used: FY: 15,16,17,18,19,20,21,22, 23; Circuit: All; State: All; District: All; Race: White, Black, Hispanic, Other; Age: All; Citizenship; Education: All; Crime Type: Drug Trafficking; Guidelines: §2D1.1, §2D2.1; Drug Type: Crack Cocaine, Criminal History: All; Career Offender Status: All.

FIGURE 7

Distribution of Sentence Length



Data from USSC Interactive Data Analyzer, Filters Used: FY: 15,16,17,18,19,20,21,22, 23; Circuit: All; State: All; District: All; Race: White, Black, Hispanic, Other; Age: All; Citizenship; Education: All; Crime Type: Drug Trafficking; Guidelines: §2D1.1, §2D2.1; Drug Type: Crack Cocaine, Criminal History: All; Career Offender Status: All.

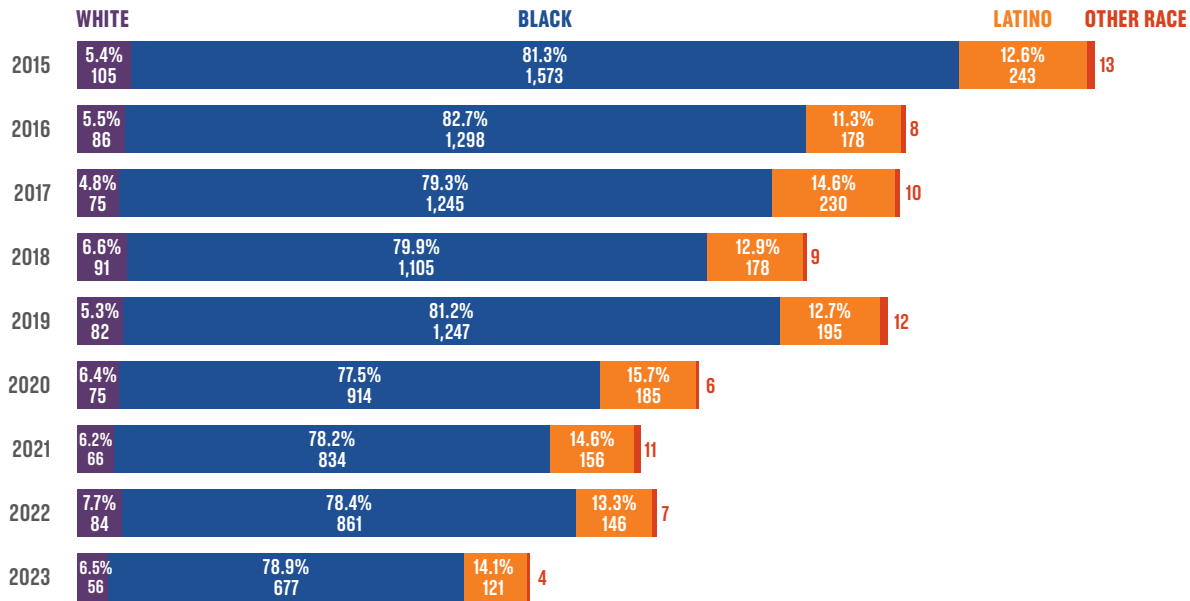
D | Racial and Ethnic Demographics of Cocaine Convictions and Sentences

When it comes to crack cocaine convictions and sentencing, Black people made up the large majority of people sentenced, slightly decreasing from 81.3% of people convicted and sentenced for crack cocaine in FY15 to 78.9% in FY23 (see Figure 8). In contrast, Latinos made up the majority of people convicted and sentenced for powder cocaine (see Figure 9).

Looking at the total number of individuals convicted and sentenced for crack and powder cocaine trafficking and possession from FY15 to FY23, we can observe that Black people made up on average 80% of convictions for crack cocaine while White and Latino people made up on average 6% and 13% respectively. In contrast, Latino individuals made up 64% of powder cocaine convictions and sentencing while Black people made up 28% and White people seven percent (see Figure 10).

FIGURE 8

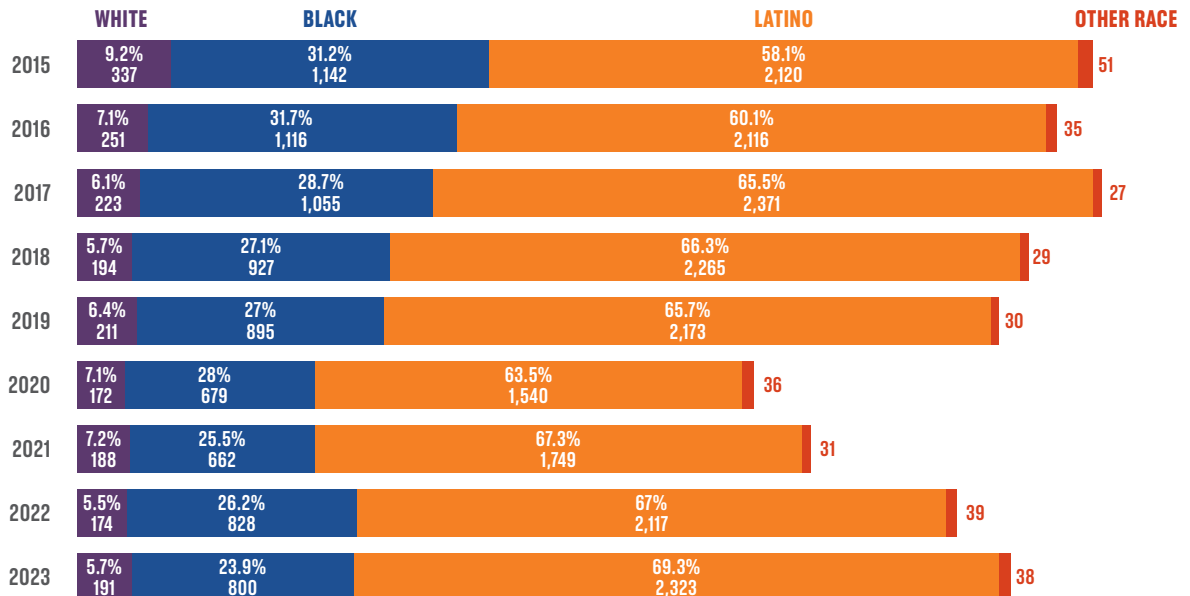
Individuals Convicted and Sentenced for Crack Cocaine, FY15-FY23



Data from USSC Interactive Data Analyzer, Filters Used: FY: 15,16,17,18,19,20,21,22, 23; Circuit: All; State: All; District: All; Race: Black, Hispanic, Other, White; Age: All; Citizenship: All; Education: All; Crime Type: Drug Possession, Drug Trafficking; Guidelines: §2D1.1, §2D2.1; Drug Type: Crack Cocaine; Criminal History: All; Career Offender Status: All.

FIGURE 9

Individuals Convicted and Sentenced for Powder Cocaine, FY15-FY23

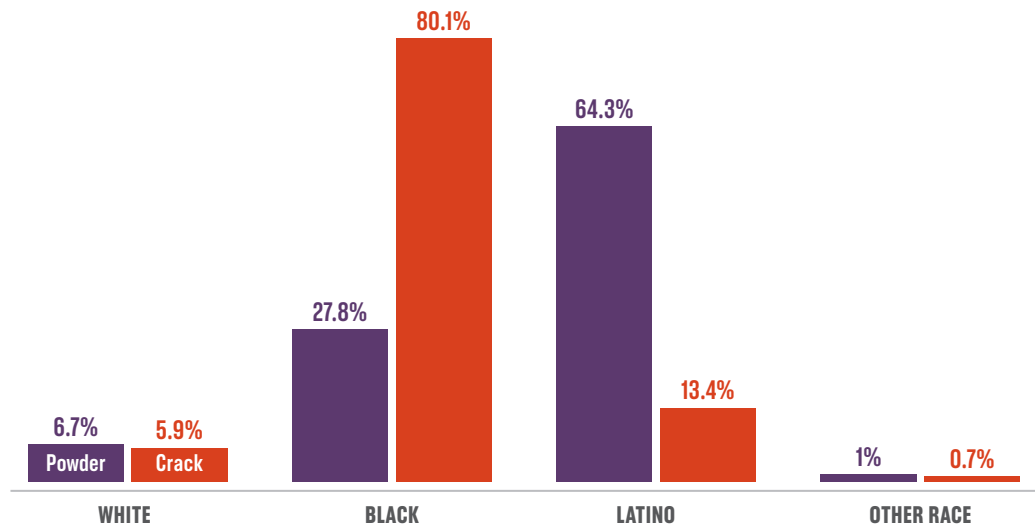


Data from USSC Interactive Data Analyzer, Filters Used: FY: 15,16,17,18,19,20,21,22, 23; Circuit: All; State: All; District: All; Race: Black, Hispanic, Other, White; Age: All; Citizenship: All; Education: All; Crime Type: Drug Possession, Drug Trafficking; Guidelines: §2D1.1, §2D2.1; Drug Type: Powder Cocaine; Criminal History: All; Career Offender Status: All.

FIGURE 10

Individuals Convicted and Sentenced Powder vs. Crack Cocaine by Race, FY15-FY23

Data from USSC Interactive Data Analyzer, Filters Used: FY: 15,16,17,18,19,20,21,22, 23; Circuit: All; State: All; District: All; Race: White, Black, Hispanic, Other; Age: All; Citizenship: All; Education: All; Crime Type: Drug Possession, Drug Trafficking; Guidelines: §2D1.1, §2D2.1; Drug Type: Crack Cocaine, Powder Cocaine; Criminal History: All; Career Offender Status: All.



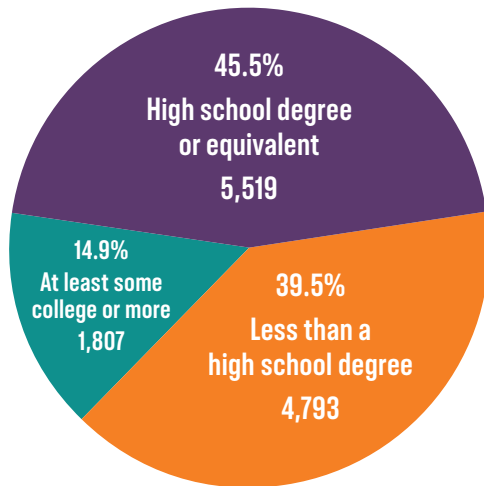
E | Educational Attainment of Individuals Convicted and Sentenced for Crack Cocaine

Crack cocaine sentencing and convictions were composed primarily of people who possessed a high school degree or less. Only 14.9% of individuals convicted and sentenced for crack cocaine had attended at least some college, while 39.5% of people did not graduate high school, and 45.5% had only a high school diploma or equivalent.

FIGURE 11

Crack Cocaine Convicts by Education Level

Data from USSC Interactive Data Analyzer, Filters Used: FY: 15,16,17,18,19,20,21,22, 23; Circuit: All; State: All; District: All; Race: White, Black, Hispanic, Other; Age: All; Citizenship: All; Education: All; Crime Type: Drug Possession, Drug Trafficking; Guidelines: §2D1.1, §2D2.1; Drug Type: Crack Cocaine; Criminal History: All; Career Offender Status: All.



V Impact of the EQUAL Act

A 2022 analysis by the United States Sentencing Commission estimated that approximately 827 individuals each year would benefit from passage of the EQUAL Act, with the average sentence being reduced by 31 months from an average sentence of 74 months to an average sentence of 43 months.¹⁶ Moreover, the Sentencing Commission estimated in 2022 that 7,787 people currently in federal prisons would be eligible for a modification of their sentence under the EQUAL Act, and that up to 7,644 people would receive a 73 month average reduction of their sentence.¹⁷

VI Current State Laws on Crack and Powder Cocaine Sentencing

Forty-one states have no sentencing disparity between crack and powder cocaine, and of the remaining nine, seven of them have a disparity that is lower than the 18-to-1 ratio at the federal level. This means that only two states, Missouri and New Hampshire, have sentencing disparities that are higher than the federal level. It is also striking that political partisanship does not appear to be determinative of cocaine sentencing policy. The vast majority of red states, blue states and purple states have no sentencing disparity (see Table 2 and Figure 12).

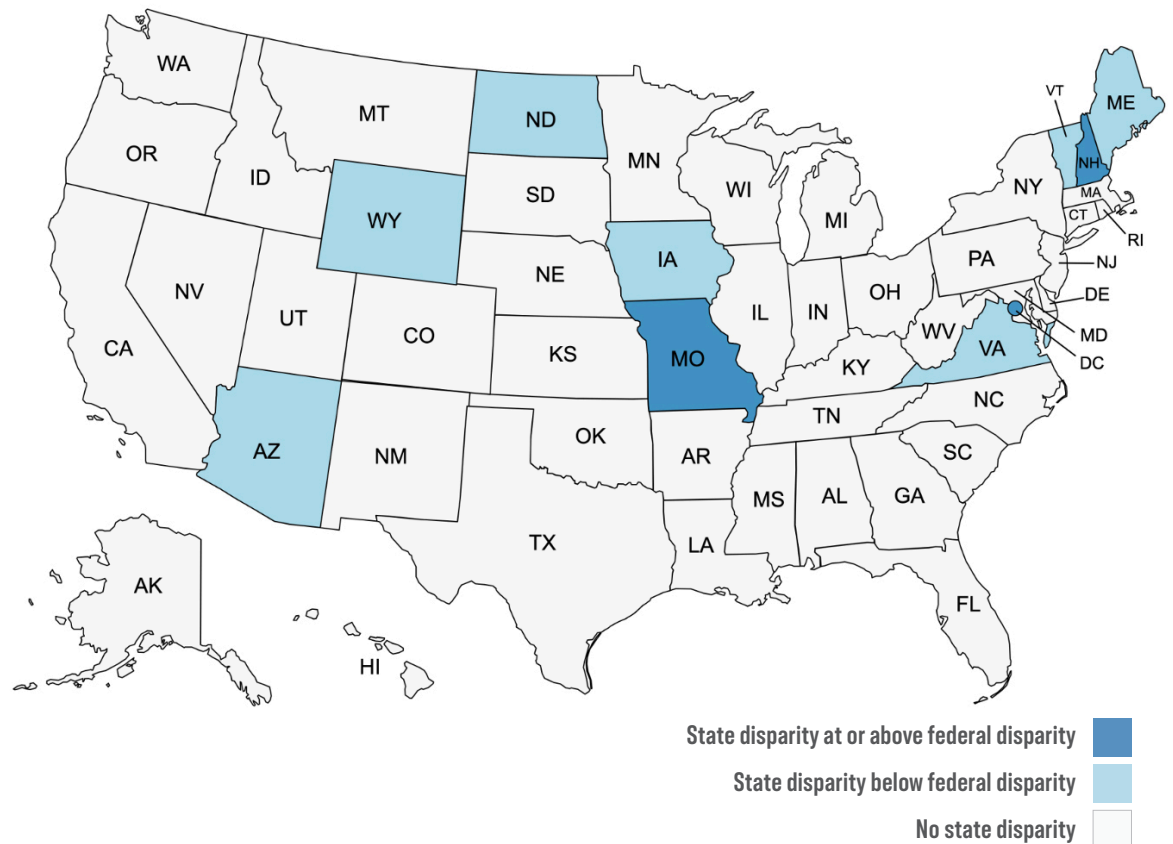
TABLE 2

Current State Laws on Crack and Powder Cocaine Sentencing

STATE	SUMMARY OF DISPARITIES
Arizona	12-to-1 drug quantity ratio ¹⁸
Iowa	2.5-to-1 drug quantity ratio ¹⁹
Maine	3.5-to-1 drug quantity ratio ²⁰
Missouri	18.75-to-1 drug quantity ratio ²¹
New Hampshire	28-to-1 drug quantity ratio ²²
North Dakota	1.79-to-1 drug quantity ratio ²³
Vermont	2.5-to-1 drug quantity ratio ²⁴
Virginia	2-to-1 drug quantity ratio ²⁵
Wyoming	6-to-1 drug quantity ratio ²⁶

FIGURE 12

State Sentencing Disparity on Crack and Powder Cocaine



End Notes

- 1 S.524 - 118th Congress (2023-2024), <https://www.congress.gov/bill/118th-congress/senate-bill/524/text>; H.R.1062 - 118th Congress (2023-2024), <https://www.congress.gov/bill/118th-congress/house-bill/1062>.
- 2 §§2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.8, 2D1.10, and 2D1.14.
- 3 The Harrison Narcotics Tax Act, Ch. 1, 38 Stat. 785, <https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/38/STATUTE-38-Pg785.pdf>.
- 4 Courtwright, David. "A Century of American Narcotic Policy," 1992; "Overview of Controlled Substances and Precursor Chemicals," USC Environmental Health & Safety, University of Southern California; United States Sentencing Commission, Special Report to the Congress: Cocaine and Federal Sentencing Policy, 1995, https://www.uscc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/199502-rtc-cocaine-sentencing-policy/1995-Crack-Report_Full.pdf; 21 U.S.C.A. § 844(a).
- 5 Statute at Large 100 Stat. 3207 - Public Law No. 99-570 (10/27/1986).
- 6 Statute at Large 102 Stat. 4181 - Public Law No. 100-690 (11/18/1988).
- 7 The Drug Sentencing Reform Act of 2001 was sponsored by Republican Senators Jeff Sessions & Orrin Hatch, and the Drug Sentencing Reform and Cocaine Kingpin Trafficking Act of 2007 was sponsored by Democratic Senator Joe Biden.
- 8 Statute at Large 124 Stat. 2372 - Public Law No. 111-220 (08/03/2010).
- 9 Statute at Large 132 Stat. 5194 - Public Law No. 115-391 (12/21/2018).
- 10 "Booker and Durbin Announce Legislation To Eliminate Federal Crack and Powder Cocaine Sentencing Disparity," January 27, 2021, <https://www.booker.senate.gov/news/press/booker-and-durbin-announce-legislation-to-eliminate-federal-crack-and-powder-cocaine-sentencing-disparity>.
- 11 H.R.1693 - 117th Congress (2021-2022), <https://www.congress.gov/bill/117th-congress/house-bill/1693>.
- 12 "Additional Department Policies Regarding Charging, Pleas, and Sentencing in Drug Cases," Memorandum for all Federal Prosecutors from Attorney General Merrick Garland, December 16, 2022, https://www.justice.gov/d9/2022-12/attorney_general_memorandum_-_additional_department_policies_regarding_charges_pleas_and_sentencing_in_drug_cases.pdf.
- 13 "Booker, Durbin, Armstrong, Jeffries Announce Re-Introduction of Bipartisan Legislation to Eliminate Federal Crack and Powder Cocaine Sentencing Disparity," February 17, 2023, <https://www.booker.senate.gov/news/press/booker-durbin-armstrong-jeffries-announce-re-introduction-of-bipartisan-legislation-to-eliminate-federal-crack-and-powder-cocaine-sentencing-disparity>.
- 14 "QuickFacts: Federal Offenders in Prison." United States Sentencing Commission, Jan. 2023, <https://www.uscc.gov/research/quick-facts/federal-offenders-prison>.
- 15 The analysis included in this section focuses solely on convictions and sentencing under United States Sentencing Guidelines §2D1.1 and §2D2.1.
- 16 Estimate of the Impact of HR 1693, the Equal Act of 2021, United States Sentencing Commission, 2022, www.uscc.gov/sites/default/files/pdf/research-and-publications/prison-and-sentencing-impact-assessments/January_2022_Impact_Analysis_for_CBO.pdf.
- 17 Estimate of the Impact of HR 1693, the Equal Act of 2021, United States Sentencing Commission, 2022, www.uscc.gov/sites/default/files/pdf/research-and-publications/prison-and-sentencing-impact-assessments/January_2022_Impact_Analysis_for_CBO.pdf.
- 18 Ariz. Rev. Stat. Ann. § 13-3401
- 19 I.C.A. § 124.401
- 20 Me. Rev. Stat. tit. 17-A, § 1107-A
- 21 Mo. Ann. Stat. § 579.068
- 22 N.H. Rev. Stat. § 318-B:26
- 23 N.D. Cent. Code Ann. § 19-03.1-23.1.
- 24 Vt. Stat. Ann. tit. 18, § 4231.
- 25 Va. Code Ann. § 18.2-248.
- 26 Wyo. Stat. Ann. § 35-7-1031.

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