

November 15, 2021

The Honorable Charles E. Schumer
Majority Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Leader Schumer:

On behalf of the undersigned organizations, representing New York's leading civil rights and criminal justice organizations, we write in strong support of the Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act. (S. 79). We urge you to continue your leadership in criminal justice reform by moving this critical bill through the Senate *by any means necessary*.

Your steadfast support of criminal justice reform has been integral in advancing marijuana and other drug sentencing reforms that will make our justice system fairer and more equitable. Your voice has been particularly impactful both in New York state and at the federal level by making criminal justice and racial justice a legislative priority for you and the party.

We now write to request that you continue your leadership by working to pass the EQUAL Act through the Senate. In September, the U.S. House of Representatives passed the bill with an overwhelming bipartisan vote of 361 to 66, with 143 Republicans voting in favor of the legislation. The EQUAL Act now awaits action in the Senate. It is this body's last, best opportunity to pass bipartisan criminal justice reform focused squarely on racial justice. The EQUAL Act would finally and fully end the federal sentencing disparity between crack cocaine and powder cocaine offenses, a pernicious vestige of the War on Drugs that has targeted hundreds of thousands of Black New Yorkers and has had a devastating effect on communities of color throughout the state and the country. The bill is sponsored in the Senate by Senators Cory Booker (D-NJ) and Dick Durbin (D-IL), and co-sponsored by Senators Rob Portman (R-OH), Thom Tillis (R-NC), Patrick Leahy (D-VT), Rand Paul (R-KY), Lisa Murkowski (R-AK), Tammy Baldwin (D-WI), Lindsey Graham (R-SC), and Jon Ossoff (D-GA).

This year marks the 35th anniversary of the Anti-Drug Abuse Act of 1986, which created, with no scientific or criminogenic basis, an egregious 100-to-1 sentencing disparity between crack cocaine and powder cocaine offenses—despite the fact these substances are two forms of the same drug and have similar effects on the brain.¹ As a result of that law, five grams of crack cocaine carried the same mandatory minimum prison sentence as 500 grams of powder cocaine.

This arbitrary, punitive policy did not curb the use or sale of crack cocaine in New York, but rather created obvious and harmful racial disparities. Four years after enactment of the disparity, the average federal drug sentence for Black defendants was 49 percent higher than the average for White defendants.² A decade after passage of this failed legislation, 85.8 percent of those who were sentenced for federal crack cocaine offenses were Black.³ Not only did this disparity exacerbate racial injustice, it actually *harmed* law enforcement; as the United States Sentencing

Commission noted, even the perception of “improper racial disparity fosters disrespect for and lack of confidence in the criminal justice system” in marginalized communities, weakening the legitimacy law enforcement and the judiciary rely on in their public service.⁴

Eliminating this disparity has broad support from Members of Congress on both sides of the aisle, major law enforcement groups, and advocacy organizations from across the political spectrum. The EQUAL Act has been endorsed by the Major Cities Chiefs Association, the National District Attorneys Association, the Association of Prosecuting Attorneys, the Department of Justice, the Office of National Drug Control Policy, and notable law enforcement leaders such as Arkansas Governor Asa Hutchinson, who served as the head of the Drug Enforcement Administration under President George W. Bush, Matthew Whitaker, former Acting Attorney General of the United States, and former U.S. Attorneys from Democratic and Republican Administrations. It is also supported by virtually every national civil rights and criminal justice group, conservative and progressive alike.

Last week, in light of the devastating impact addiction and incarceration has had on our military veterans, Senators Booker and Portman filed the EQUAL Act as an amendment to the National Defense Authorization Act.⁵ We urge your support for this amendment, and further respectfully ask for your assurance that the EQUAL Act will ultimately make it to the President’s desk this year, whether through the NDAA or any other vehicle that receives a vote on the Senate floor. Without your leadership, we fear this landmark legislation could fall by the wayside, an unacceptable outcome, especially considering the overwhelming bipartisan House vote.

As you continue to advance necessary criminal justice reforms through the United States Senate, we urge you to please prioritize the EQUAL Act and help us make history by ending an extraordinarily unjust racial disparity.

Sincerely,

Center for Community Alternatives
Center for Justice and Human Dignity
Citizen Action – NY
Dream Corps Justice
Equitable Justice Network
FAMM
Harlem Hire
Incarcerated Nation Network, Inc.
Innocence Project
Justice Action Network
JustLeadershipUSA

Ladies of Hope Ministries
NAACP New York Conference
New York Urban League
New Yorkers United for Justice
Osborne Association
Release Aging People in Prison Campaign
REFORM Alliance
Silent Cry
The Tzedek Association
Vera Institute of Justice

¹ Dorothy K. Hatsukami, PhD and Marian W. Fischman, PhD, *Crack Cocaine and Cocaine Hydrochloride: Are the Differences Myth or Reality?*, JAMA, November 1996 <https://jamanetwork.com/journals/jama/article-abstract/410806>.

² Kevin Ring and Heather Rice-Minus, *Why do we still punish crack and powder cocaine offenses differently?*, The Hill (March 3, 2021), available at <https://thehill.com/opinion/criminal-justice/540816-why-do-we-still-punish-crack-and-powder-cocaine-offenses-differently>.

³ U.S. Sentencing Commission, *1996 Annual Report* (Race of Drug Defendant by Drug Type, Table 29), 1996, available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/1996/TAB-29_0.pdf.

⁴ U.S. Sentencing Commission, *Report to the Congress: Cocaine and Federal Sentencing Policy*, 2002, available at 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.

⁵ For more on how drug policy affects veterans see Jason Pye, *Veterans fought for our freedom: To return the favor, fight for criminal justice reform*, The Hill (November 11, 2021), available at <https://thehill.com/opinion/criminal-justice/581014-veterans-fought-for-our-freedom-to-return-the-favor-fight-for>. And Justice Action Network, *Support After Service: Justice Reforms Helping Our Veterans* at https://www.youtube.com/watch?v=nWcrt6XnUQ&ab_channel=JusticeActionNetwork.