

September 20, 2022

The Honorable Richard Durbin Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin:

On behalf of the undersigned organizations, representing Illinois's leading civil rights and criminal justice organizations, we write to respectfully urge you to do everything in your power to include the Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act (S. 79, H.R. 1693) in the National Defense Authorization Act (NDAA) that is sent to the President's desk. We thank you for your steadfast leadership on this bill and on criminal justice reform and hope to see the EQUAL Act signed into law before the end of the year.

In April, we wrote to ask you to shepherd the EQUAL Act through the Senate by bringing the bill to a vote as soon as possible. Since then, the House of Representatives included the EQUAL Act in its version of the NDAA (H.R. 7900), passed on July 14th. This is the second time the House has passed the EQUAL Act. A year ago this month, the House passed the bill with an overwhelming bipartisan floor vote of 361 to 66, with 143 Republicans voting in favor of the legislation. We were equally encouraged to see Senate Majority Leader Chuck Schumer (D-NY) say that now is the time to pass this bill during a press conference this summer.

The EQUAL Act is a groundbreaking bill that will finally and fully eliminate one of the worst vestiges of injustice in America's drug policy: the unjustifiable sentencing disparity between crack and powder cocaine, which has had a devastating disproportionate impact on the Black community. As we stated in April, we are proud of your candid remarks on the Senate floor lamenting the creation and passage of this disparity, originally set at 100-to-1 in the Anti-Drug Abuse Act of 1986 that treated five grams of crack cocaine the same as 500 grams of powder cocaine.

As you have noted many times, this arbitrary, punitive policy did not curb the use or sale of crack cocaine, 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.¹ A decade after passage of this legislation, 85.8 percent of those who were sentenced for federal crack cocaine offenses were Black.² 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.³

You have been at the forefront of successful efforts to reform this disparity, first through the Fair Sentencing Act of 2010 (FSA), which lowered the disparity to 18-to-1, and then through the landmark First Step Act of 2018, which, among other important provisions, made the FSA

retroactive.

Now is the time to eliminate the crack/power cocaine disparity once and for all through the EQUAL Act, legislation you introduced with your friend and criminal justice reform ally, Senator Cory Booker (D-NJ).

The final NDAA is currently being negotiated in the Senate. We write specifically to request that you work to keep the EQUAL Act in the final version of the NDAA. The clock on this year's legislative calendar is running out and too many lives depend on this critical relief. The NDAA provides an existing, expeditious, and efficient manner to ensure this critical racial justice bill passes and we ask that you do everything within your power as Chairman of the Judiciary Committee to ensure the EQUAL Act becomes law as part of the NDAA. Sending this bill to the President's desk will finally eliminate a pernicious vestige of the War on Drugs that unfairly and disproportionately impacted the Black and brown community in Illinois, and all throughout the country.

Without your leadership, this landmark legislation will fall by the wayside -- an unacceptable outcome for the thousands of individuals and families awaiting relief. Please prioritize the EQUAL Act by including it in the NDAA and help us make history by ending an extraordinarily unjust racial disparity.

Sincerely,

Chicago Alliance Against Sexual Exploitation
Chicago Jobs Council
Faith Coalition for the Common Good
Gamaliel of Illinois and Iowa
Heartland Alliance
Illinois Justice Project
Illinois Prison Project
Justice Action Network
Restore Justice
Stand for Children Illinois
The Network Advocating Against Domestic Violence
The People's Lobby
United Congregations of Metro East

¹ 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>.

² 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.

³ 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.