



September 8th, 2023

To: Members of Congress
From: Americans for Tax Reform
Re: Support the EQUAL Act

Dear Member of Congress,

On behalf of Americans for Tax Reform, I write in support of the Eliminating a Quantifiably Unjust Application of the Law Act, or EQUAL Act, H.R. 1062/S. 524.

This legislation would eliminate a sentencing disparity that currently exists between crack and powdered cocaine. This disparity has needlessly imposed sentences 100 times longer for possession of crack cocaine than the powdered counterpart, and despite some reform a large difference remains.

This unjustified disparity has resulted in the imprisonment of people who pose no greater threat than their counterparts convicted of cocaine offenses for far greater periods of time, costing taxpayers more money for no public safety benefit.

Americans for Tax Reform is dedicated to reducing the influence of government in our lives. The first and most obvious way that ATR works toward this end is by reducing the burden of taxation on all taxpayers, but for years ATR has also fought the creeping federal regulatory burden and otherwise sought to promote individuals' control of their own lives.

It is a core, taxpayer-funded, government role to protect citizens from crime, and manage the criminal justice system. Taxpayers, and all Americans who cherish individual liberty, should take an interest that the criminal justice system is efficient and effective at protecting public safety, upholding the rule of law and property rights, while respecting the constitutional rights of citizens. Where there are failures, conservatives should work to fix the issue, just as we do in other areas of government.

For these reasons, ATR has taken a strong interest in improving the criminal justice system. In 2009, I testified before the House Judiciary's Subcommittee on Crime, Terrorism, and Homeland Security that mandatory minimum sentencing policies, relating to drug offenses, do not enhance public safety and are not worth the high cost to justice involved individuals and America's taxpayers. Since my 2009 testimony suggesting a review of federal crimes and sunsets on any law including a mandatory minimum is still relevant today, I have included it as part of this submission.

While we haven't yet set up a sunset policy on federal mandatory minimums, the EQUAL Act sets us on the right path by equalizing the mandatory minimums for crack cocaine and powder cocaine. It seems that from 1986 to 2010 to 2018 to now 2023 we are reviewing this particular mandatory minimum on somewhat of a sunset schedule. A sunset clause on any mandatory minimum requiring Congress to review, say every four or five years, as I suggested in 2009 testimony, might get us to this place of reassessment of punishments and costs sooner.

The 1986 Anti-Drug Abuse Act set up the initial disparity: the 100-to-1 rule required a five-year mandatory minimum sentence for trafficking in 500 grams of powder cocaine or five grams of crack.

The enhanced punishments for crack cocaine were designed to target "kingpins" and "middle level dealers," however research conducted by the U.S. Sentencing Commission found that it primarily

722 12th Street N.W.

Fourth Floor

Washington, D.C.

20005

T: (202) 785-0266

F: (202) 785-0261

www.atr.org

impacted low level dealers. Additionally, research has shown that these different mandatory minimums for crack cocaine significantly impacted African Americans and Hispanic Americans.

In 2010, the Fair Sentencing Act changed the crack-to-powder-cocaine ratio regarding the amount required to impose an equal sentence from 100-to-1 to 18-to-1, thereby increasing the amount of crack necessary to result in the minimum sentence and eliminated the five-year mandatory minimum sentence for simple possession of crack. As of now, it takes 18 times as much powder cocaine as crack to trigger the same mandatory minimum sentences for trafficking with the sentences involved being five and 10 years.

Excessively long sentences are not only unjust but extremely expensive and wasteful. The federal government simply cannot afford to continue to house so many nonviolent prisoners for such lengthy sentences. In FY 2015, the average cost of incarceration of a federal prisoner was just under \$32,000. That cost is steadily rising. In FY 2017 it was \$34,704.12 per year or \$94.82 per day, and in FY 2018 data from the Bureau of Prisons estimated that it cost \$37,449.00 per year per inmate which comes to \$102.60 per day. Fortunately, thanks in part to the bipartisan First Step Act, the number of federal inmates is decreasing. As of June 10th, 2021, there are 153,047 total federal inmates, with 129,219 of which are in BOP custody (facilities), whereas in FY2012 the number of inmates under BOP jurisdiction had ballooned to 219,000. The economic cost of the prison population remains staggering. Since FY 2000 the federal prison budget of about \$3.5 billion continues to rise, to about \$5 billion in 2006 up to about \$7 billion in 2017.

Even without a sunset clause on mandatory minimums, the EQUAL Act continues to lower the total number of nonviolent incarcerated individuals by finally equalizing the treatment of crack cocaine and powdered cocaine offenses.

Importantly, the bill also makes this relief retroactive following individualized case review by federal courts in order to address in some degree the unjust punishments of the past.

For these reasons, Americans for Tax Reform urges you to support the EQUAL Act.

Onward,



Grover G. Norquist
President, Americans for Tax Reform