



National District Attorneys Association

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The Honorable Dick Durbin
224 Dirksen Senate Office Building
Washington, D.C., 20510

The Honorable Cory Booker
224 Dirksen Senate Office Building
Washington, D.C., 20510

Dear Chairman Durbin & Senator Booker,

I am reaching out on behalf of the National District Attorneys Association (NDAA), the oldest and largest national organization representing state and local prosecutors in the country. With more than 5,000 members nationwide, NDAA is recognized as the leading source of national expertise on the prosecution function and is a valuable resource for the media, academia, government, and community leaders. Today, I write in support of S. 79, the *Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act*.

As you know, this bipartisan proposal would eliminate the disparity in Federal sentencing between crack and powder cocaine and apply this change retroactively to end an outdated practice that disproportionately harms communities of color. The legislation takes necessary steps to end the vast difference in sentencing between these two substances in Federal law, a change that has already occurred in over 40 States across the country.

Our members supported efforts to reduce this unjust difference in sentencing by supporting Senator Durbin's *Fair Sentencing Act*, which passed in 2010 and was applied retroactively in Senator Grassley and Senator Booker's *First Step Act of 2018*, the landmark federal criminal justice reform bill also supported by NDAA. As the *First Step Act* is implemented, the Nation's prosecutors are working with lawmakers and advocates to evaluate the potential next steps to ensure those who are incarcerated are successfully reintegrated into society. The *EQUAL Act* represents a commonsense reform that builds off the successes accomplished back in 2018.

Specifically, State and local prosecutors throughout the country have supported removing the disparity between crack and powder cocaine in State laws. During this transition period, our members could not identify any increase in local crime and, in turn, found that trust in the criminal justice system grew as these changes were enacted. Further, this shift in the law did not take away any tools from prosecutors as they were still able to hold bad actors accountable, while ensuring sentences remained proportional to the crime. Similar to our Federal partners, State and local prosecutors still possess other criminal charges to ensure violent criminals are held responsible for their actions, despite the reduced penalties for crack offenses. Important to our membership, it became clear that ending the disparity had no discernable impact on increasing violent crime while instead improving community and law enforcement relationships.

We are confident that these changes would look similar in form and function for our Federal partners. The legislation takes important steps to ensure individuals eligible for early release

under these provisions must first apply for a review by a Federal Court which applies an individual analysis that includes input from victims and prosecutors. The *First Step Act of 2018* built out the capacity of Federal Courts to review these applications for early release and we support increased resources to assist the Courts and Federal Supervisory Release Agents in reviewing and handling these cases. However, it is clear that the processes in place at the Federal level and the additional tools available to our U.S. Attorney partners are sufficient to ensure that prosecutors can keep communities safe while developing trust that the criminal justice system is equitable for all American citizens.

Finally, our members are supportive of the provisions related to applying the changes in disparity retroactively, providing immediate relief for those individuals who were unjustly sentenced at a higher rate than those using the same substance. This area of the law is particularly ripe for retroactive application, as the Federal guidelines treated an identical substance, powder cocaine, one way, while over punishing the same drug at a higher rate. Allowing for retroactivity in this legislation does not question the past decision making of prosecutors, but instead allows for the two identical substances to be treated as they always should have: equally.

Ending the disparity in sentencing between crack and powder cocaine is a logical next step in increasing trust and fairness in our Nation's laws. NDAA will continue working alongside Congress to end unnecessary and harmful inequities so that people of all backgrounds are treated equally under the law. We thank Senator Booker and Senator Durbin for leading this important effort and appreciate their staffs' commitment to moving this legislation forward.

We look forward to the Senate Judiciary Committee's hearing and hope to provide valuable feedback to ensure Congress can move this bipartisan legislation to the President's desk.

Sincerely,



Nancy G. Parr
NDAA President