

## Estimate of the Impact of H.R. 1693, The EQUAL Act of 2021

Section	Summary	Sentencing & Imprisonment Impact
2 <sup>1</sup>	<p style="text-align: center;">Elimination of Increased Penalties for Cocaine Offenses Where the Cocaine Involved Is Cocaine Base</p>	<p><b>Prospective Impact:</b> The Commission estimates that approximately 827 offenders each year would benefit from this section of the bill.<sup>2</sup> The current average sentence for those offenders is 74 months. The estimated new sentence for those offenders would be 43 months.</p> <p><b>Retroactive Impact:</b> Approximately 7,787 offenders in BOP custody would be eligible to seek a modification of their sentence based on this section of the bill. The Commission estimates that up to 7,644 offenders would receive a reduction in their sentence.<sup>3</sup> The current average sentence for these offenders is 173 months. The estimated new sentence for these offenders would be 100 months.</p> <p><b>Assumptions made for this estimate:</b></p> <p>The estimate assumes that the current statutory minimum penalties that apply for powder cocaine drug trafficking offenses would continue to apply to crack cocaine drug trafficking offenses. This estimate also assumes that courts would apply the current sentencing guidelines provisions for powder cocaine drug trafficking offenses to crack cocaine drug trafficking offenses. Therefore, the offenders affected by the bill are those crack cocaine trafficking offenders sentenced under USSG §2D1.1 of the sentencing guidelines (and under §§2D1.2, 2D1.5, 2D1.6, 2D1.8, 2D1.10, or 2D1.14 via the cross-reference to §2D1.1) for whom the final offense level determined under the powder cocaine guideline would be lower than the final offense level determined under the crack cocaine guideline. Crack cocaine offenders sentenced under the career offender guideline (§4B1.1) also would be affected by the bill if the mandatory minimum penalties that apply to their offense were changed by the bill.</p> <p>For the prospective portion of this analysis, it was assumed that the courts would impose sentences relative to the guideline range in the same proportion after enactment of the bill as before: 44.4% within range, 3.5% above range, 24.3% government sponsored below range, and 27.8% other below range. For both the prospective and retroactive analyses, the new sentence for offenders sentenced outside the guideline range was estimated to be at a point that was the same average distance from the new guideline range as the original sentence was from the original guideline range for each of the four groups.</p> <p>For the retroactive portion of the analysis, the estimate further assumes that courts would reduce the sentence of all offenders seeking a modification of sentence under the bill whose final offense level would be lower under the current sentencing guidelines for powder cocaine drug trafficking offenses.<sup>3</sup> The estimate also assumes that offenders for whom a mandatory minimum penalty was enhanced under the recidivist provisions of the drug trafficking statutes (<i>e.g.</i>, 21 U.S.C. § 851) would be resentenced in accordance with the recidivist penalties in current law, rather than any higher penalties that were in effect when the offender was first sentenced.<sup>4</sup> The estimate further assumes that incarcerated offenders will earn the maximum good time credit allowed by current law.</p>

SOURCE: U.S. Sentencing Commission Prison and Sentencing Impact Assessment Model, FY2020 Datafiles, USSCFY20. All retroactive analyses were based on data from the Federal Bureau of Prisons (BOP) regarding offenders incarcerated on March 27, 2021.

<sup>1</sup> Section 2(c)(2) of the bill authorizes courts to apply the statutory amendments made by section 2(a) to offenders sentenced before the date of enactment of the bill.

<sup>2</sup> In FY 2020, there were 1,479 offenders sentenced for an offense involving drug trafficking in which crack cocaine was the only drug or was one of several drugs involved. For 827 of those offenders, the final offense level determined under the powder cocaine guideline would be lower than the final offense level determined under the crack cocaine guideline or, in the case of career offenders, the changes made by the bill would lower the offense level under the career offender guideline.

<sup>3</sup> Under the bill, courts may but are not required to modify the sentence for eligible offenders sentenced before enactment of the bill.

<sup>4</sup> The Commission does not have complete criminal history information concerning all offenders currently incarcerated in the Bureau of Prisons. Therefore, it is not possible to estimate with precision the number of offenders with a prior recidivist enhancement who may no longer qualify for any recidivist enhancement due to the lack of prior conviction for a serious drug felony or serious violent felony. Accordingly, the Commission has assumed that all offenders with a prior recidivist enhancement would continue to qualify for such an enhancement.

## Year-by-Year Release Analysis of H.R. 1693, the EQUAL Act of 2021

### Sec. 2. Elimination of Increased Penalties for Cocaine Offenses Where the Cocaine Involved Is Cocaine Base

#### *Prospective Analysis (annual)*

	Total	Immediate	end of year 1	end of year 2	end of year 3	end of year 4	end of year 5	end of year 6	end of year 7	end of year 8	end of year 9	end of year 10	More than 10 years
Current	827	N/A	41	90	111	76	142	104	75	33	52	25	78
New	827	N/A	166	236	109	47	107	55	33	18	26	9	21

#### *Retrospective Analysis*

	Total	Immediate	end of year 1	end of year 2	end of year 3	end of year 4	end of year 5	end of year 6	end of year 7	end of year 8	end of year 9	end of year 10	More than 10 years
Current	7,644	0	1,582	1,216	1,058	779	622	478	406	288	223	192	800
New	7,644	4,763	952	674	408	257	170	120	68	46	23	25	138

SOURCE: U.S. Sentencing Commission. All retroactive analyses were based on data from the Federal Bureau of Prisons (BOP) regarding offenders incarcerated on March 27, 2021.