

September 8, 2022

**Responses to Questions for the Record from Hon. Senator Charles E. Grassley
U.S. Senate Committee on the Judiciary,
“Examining Federal Sentencing for Crack and Powder Cocaine,”
Held on June 22, 2021**

**Submitted by Russell Coleman, former U.S. Attorney for the Western District of Kentucky,
September 8, 2022**

- 1. Under the current law, distributing 28 grams of cocaine base and 500 grams of powder cocaine trigger a 5-year mandatory minimum sentence. A 10-year mandatory minimum sentence can be imposed for trafficking in 280 grams of cocaine base and 5 kilograms of powder cocaine.**
 - a. These laws are intended to target and punish drug traffickers and not those who are addicts or possess drugs, correct?**

On June 22, 2021, I testified in support of the EQUAL Act, legislation supported by many well-respected state and national law enforcement leaders. At the conclusion of the Senate Judiciary Committee’s hearing, Senator Cory Booker, Chairman of the Sub-Committee on Crime and Terrorism stated to all participants in the hearing that the record on this matter would stay open for additional questions through 5:00 pm June 29, 2021.

A formal request to complete these questions for the record was sent to me without further explanation on August 25, 2022, well over a year after the hearing record closed. A response was required “no later than **5:00 p.m. on Thursday, September 8, 2022.**”

The legislation before this Committee, the EQUAL Act (“Eliminating a Quantifiably Unjust Application of the Law, S. 79) would eliminate the federal sentencing disparity between crack cocaine crime and powder cocaine crime. In addition to the federal crack/powder cocaine disparity being a distraction from the exigent methamphetamine and opioid crises, it remains a barrier to relationship-building in minority communities most impacted by violence.

The EQUAL Act has strong support of law enforcement. It is supported by the National District Attorneys Association, Major Cities Chiefs Association, Association of Prosecuting Attorneys, Kentucky Sheriffs' Association, Kentucky Association of Chiefs of Police, and former Acting Attorney General of the United States Matthew Whitaker, among other law enforcement groups.

2. Is it cheaper to buy crack than powder cocaine per dose? Does this have an impact on communities and those who use it?

The anecdotal consensus is that crack cocaine is cheaper to purchase per gram in comparison to powder cocaine. Typically, this is because crack cocaine is mixed with a cutting agent in order to create the rock or crystal form, whereas powder cocaine, the form that is most often being trafficked across our borders and distributed throughout the country, has not gone through this additional process.

3. As a federal prosecutor and in your experience, what amount in grams do those defendants charged and/or sentenced with distributing crack cocaine typically possess? What about powder cocaine?

It depends; it largely comes down to the role in which a defendant has played in a particular drug operation; street-level dealers of either substance carry smaller amounts of cocaine compared to traffickers and distributors.

4. During the Judiciary Committee hearing on June 22, 2021, you mentioned that the mandatory minimum penalties that apply for cocaine traffickers – regardless of powder or crack cocaine – are tools “frankly, that we need.”

a. Do mandatory minimum sentences for drug manufacturers and distributors help protect addicts and vulnerable communities?

Weight-based federal mandatory minimum sentences are a tool that law enforcement needs in order to protect our communities. We rely on these mandatory minimums, as well as other sentencing enhancements related to firearms and recidivism, to ensure that manufacturers and distributors (those who often pose the greatest threat to our communities) are held accountable.

b. If Congress is to reassess at what quantity of cocaine a mandatory minimum attaches, is it safe to say that the current mandatory minimum scheme works well to deter and protect?

The threshold for triggering the mandatory minimum sentence for powder cocaine has not been changed since its enactment in 1986. Currently, I have not seen any evidence warranting an adjustment of the powder cocaine threshold. Looking at the data provided by the U.S. Sentencing Commission, powder cocaine, like crack cocaine, has declined as a share of all federal drug cases,

from 26 percent in 1996 to 16.8 percent in 2021. Powder cocaine, while still present, has been supplanted as an exigent threat by other controlled substances like methamphetamine and opioids. There is not a community in America that has not felt the impact of the opioid crisis, and, despite Congress enacting tougher penalties for methamphetamine in 1998¹ by cutting the quantities that trigger the five- and ten-year mandatory minimum sentences in half, the share of defendants for methamphetamine has increased from 11.4 percent in 1998² to 48.3 percent in 2021.³

We absolutely must focus our attention on curtailing the flow of these deadly drugs through our porous borders and we must have strict penalties for traffickers.

5. The 2020 DEA National Drug Threat Assessment notes that the “[d]omestic availability [of cocaine] is steady, likely driven by high levels of coca cultivation and cocaine production,” and that “deaths from drug poisoning involving cocaine have increased every year since 2013.” However, during the hearing, you testified that “in the Western District of Kentucky, during the three and a half years I served as United States Attorney, it was exceedingly rare to see crack cocaine,” but that it is still a threat.

a. What do you believe is the reason for this disconnect? Is a different illicit drug more pervasive in the Western District of Kentucky? Is this because cocaine is increasingly mixed with other substances, like fentanyl?

Notably, the available public health data, including the Centers for Disease Control and Prevention’s used in the DEA National Drug Threat Assessment, does not delineate between crack and powder cocaine. The data referenced in that report refers to cocaine broadly, including in its powder and crack forms.

This report illustrates just how serious the opioid crisis is across our nation. The leading driver for the increase in overdose deaths in cocaine cases is the presence of what the DEA labels synthetic opioids other than methadone (SOOTM), which includes fentanyl and fentanyl-related substances. In 2013, it was determined that SOOTMs were present in only 245 overdose cases. However, each year since 2013 has seen an increase in the number of SOOTM-related overdoses. As the prevalence of fentanyl and its analogues increased, we saw an explosion in the number overdose deaths involving cocaine. Upon examination of Figure 22 in the DEA Assessment, the majority of overdose deaths involving cocaine in 2017 and 2018 also involved SOOTM. The national trend is reflected in Kentucky as well. In 2019, Kentucky saw 1,316 resident overdose deaths. Fentanyl and fentanyl analogues were present in the majority of cases (759 fentanyl cases or 58 percent of all cases, 544 4-ANPP cases 41 percent of all cases, and 419 Acetyl fentanyl cases or 32 percent of all cases). Methamphetamine was another major contributor with a total of 517 cases (39 percent of all cases). Overdose deaths involving cocaine totaled 181 (14 percent of all cases).

Fentanyl and its analogues have ravaged our communities and their deadly impact cannot be understated, which is why I believe law enforcement must focus our resources towards curtailing the spread of this deadly drug.⁴

b. Is it important for Congress' approach to drug policy prevention and enforcement to be comprehensive in that it should address polydrug use and trafficking?

It is critical that Congress support efforts by law enforcement at the federal, state, and local levels to curtail the supply of all illegal drugs through interdiction and enforcement. Congress must also provide funding and resources to address the demand side of the equation to expand treatment and services to address addiction for all drug use and take additional steps to secure our all too permeable Southwest Border.

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¹ Pub. Law No: 105-277.

² U.S. Sentencing Commission, 1998 Datafile, USSCFY98, Table 33.
https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/1998/table33_0.pdf.

³ U.S. Sentencing Commission, 2021 Datafile, USSCFY21, Table D-1.
<https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2021/TableD1.pdf>.

⁴ Drug Enforcement Administration, "2020 National Drug Threat Assessment," Figure 22. Drug Poisoning Deaths Involving: Cocaine and a SOOTM; Cocaine without a SOOTM, 2010 – 2018 (2021).
https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf.