

**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 29, 2021**

**Submitted by Asa Hutchinson**

**Governor of Arkansas and former Administrator of the Drug  
Enforcement Agency, September 22, 2022**

**1. During the Senate Judiciary Committee hearing on June 22, you discussed the impact of the 1:1 sentencing ratio between crack and powder cocaine at the state level and the impact that you’ve seen it have on Arkansas.**

**a. Since Arkansas made the sentencing ratio 1:1, what data has been collected on its impact with respect to recidivism, violence, and addiction? Please provide a copy of this data and other relevant information.**

Thank you, Senator Grassley, for your question and for your continued championship of criminal justice reforms, including the First Step Act. The First Step Act is a landmark law enacted by President Trump that has provided second chances for thousands of deserving individuals. I join you in supporting an approach that is both tough on crime and smart on crime that tackles recidivism through incentivizing participation in recidivism reduction programming and other productive activities.

Arkansas, like 36 other states,<sup>1</sup> never created a disparity as the majority of states learned from the failed application of the sentencing disparity at the federal level. Only eight states now have a sentencing disparity as the trend has largely shifted away from establishing harmful sentencing applications in our criminal codes.

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<sup>1</sup> U.S. Sentencing Commission, *Report to the Congress: COCAINE AND FEDERAL SENTENCING POLICY*. (May 2007).  
[https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200705\\_RtC\\_Cocaine\\_Sentencing\\_Policy.pdf](https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200705_RtC_Cocaine_Sentencing_Policy.pdf).

For broader recidivism data and statistics, I would like to share two reports: *RECIDIVISM IN ARKANSAS A Roadmap to Reform*, which found that of the 4,155 individuals released in 2017 for a drug-related offense, 654 were returned to prison for a drug-related offense within three years of release (15.7 percent from this cohort);<sup>2</sup> and *Recidivism of Arkansas Offenders FINDINGS FROM THE 2016 RELEASE COHORT*, which found that 29 percent of individuals released for drug-related offenses in 2016 were returned to prison for a drug-related offense within the first three years after release. This figure is substantially lower than the overall recidivism rate from this cohort, which was 47.5 percent within the three-year period.<sup>3</sup>

**2. Over the past two years, how many drug trafficking prosecutions were completed in Arkansas? Over the past two years, how many drug possession prosecutions (including pretrial diversion, drug court, and other deferred prosecution agreements) were completed in Arkansas?**

According to the Arkansas Department of Public Safety's Crime Information Center (data below), the total number of drug-related offenses for 2021 and 2020 were a small, yet significant, percentage of total offenses.<sup>4</sup> Cocaine, in all its forms, have played a minor role in the number of drug offenses, averaging only 4.4 percent of selling/manufacturing violations and 2.9 percent of possession violations over the past two years. The fact that Arkansas is seeing such low numbers in cocaine offenses underscores why resources should be diverted towards more pervasive and more lethal drugs such as fentanyl and methamphetamine

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<sup>2</sup> Arkansas Department of Corrections, *RECIDIVISM IN ARKANSAS: A Roadmap to Reform*. (2022). [https://doc.arkansas.gov/wp-content/uploads/2022/04/Recidivism-in-Arkansas-A-Roadmap-to-Reform-April29\\_2022-single\\_BOC\\_FINAL.pdf](https://doc.arkansas.gov/wp-content/uploads/2022/04/Recidivism-in-Arkansas-A-Roadmap-to-Reform-April29_2022-single_BOC_FINAL.pdf).

<sup>3</sup> Arkansas Department of Corrections, *Recidivism of Arkansas Offenders: FINDINGS FROM THE 2016 RELEASE COHORT*. (April 29, 2021). <https://doc.arkansas.gov/wp-content/uploads/2021/04/2016-Recidivism-Report-approved-by-BOC-4-29-2021-Final.pdf>.

<sup>4</sup> See Arkansas Department of Corrections' Crime Information Center website on crime statistics at: <https://www.dps.arkansas.gov/crime-info-support/arkansas-crime-information-center/crime-statistics/>.

- 2020<sup>5</sup>
  - Drug/Narcotics Violations: 19,175 (7.9 percent of total offenses)
  - Drug/Narcotics Equipment Violations: 13,570 (5.6 percent of total offenses)
  - Selling and Manufacturing Violations<sup>6</sup>
    - Crack Cocaine: 51 (1.7 percent of all Selling/Manufacturing Violations)
    - Cocaine not including crack cocaine: 79 (2.6 percent of all Selling/Manufacturing Violations)
  - Possession Violations
    - Crack Cocaine: 218 (1.0 percent of all Possession Violations)
    - Cocaine not including crack cocaine: 401 (1.8 percent of all Possession Violations)
- 2021<sup>7</sup>
  - Drug/Narcotics Violations: 20,564 (8.9 percent of total offenses)
  - Drug/Narcotics Equipment Violations: 13,933 (6.1 percent of total offenses)
  - Selling and Manufacturing Violations<sup>8</sup>
    - Crack Cocaine: 53 (1.7 percent of all Selling/Manufacturing Violations)
    - Cocaine not including crack cocaine: 90 (2.8 percent of all Selling/Manufacturing Violations)
  - Possession Violations
    - Crack Cocaine: 299 (1.3 percent of all Possession Violations)
    - Cocaine not including crack cocaine: 425 (1.8 percent of all Possession Violations)

Thank you for the opportunity to testify and to provide these additional responses.

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<sup>5</sup> Arkansas Department of Corrections, *Crime in Arkansas 2020*. Offenses by Contributor, Crimes Against Society (2020). [https://www.dps.arkansas.gov/wp-content/uploads/2021/06/2020-Offense-By-Contributor\\_-1.pdf](https://www.dps.arkansas.gov/wp-content/uploads/2021/06/2020-Offense-By-Contributor_-1.pdf).

<sup>6</sup> Arkansas Department of Corrections, *Crime in Arkansas 2020*. Drugs/Narcotics Assessment by Contributor (2020). [https://www.dps.arkansas.gov/wp-content/uploads/2021/07/2020-Narcotic-Arrests-By-Contributor\\_.pdf](https://www.dps.arkansas.gov/wp-content/uploads/2021/07/2020-Narcotic-Arrests-By-Contributor_.pdf).

<sup>7</sup> Arkansas Department of Corrections, *Crime in Arkansas 2021*. Offenses by Contributor, Crimes Against Society (2020). <https://www.dps.arkansas.gov/wp-content/uploads/2022/06/2021-Offense-By-Contributor.pdf>

<sup>8</sup> Arkansas Department of Corrections, *Crime in Arkansas 2020*. Drugs/Narcotics Assessment by Contributor (2021). <https://www.dps.arkansas.gov/wp-content/uploads/2022/06/2021-Drug-Narcotic-Arrests-By-Contributor.pdf>.

**Responses to Questions for the Record from  
Hon. Senator Thom Tillis**

**U.S. Senate Committee on the Judiciary,**

**“Examining Federal Sentencing for Crack and Powder Cocaine,”**

**Held on June 22, 2021**

**Submitted by Asa Hutchinson**

**Governor of Arkansas and former Administrator of the Drug  
Enforcement Agency, September 22, 2022**

- 1. Governor Hutchinson, I understand you support the *EQUAL Act*. When you were DEA Director, did you also support amending the crack to powder cocaine ratio? If not, what changed your mind on this issue?**

I wanted to start by thanking Senator Tillis for his support of criminal justice reforms, including the EQUAL Act. I have supported reducing the sentencing disparity between crack and powder cocaine dating back to my time as DEA Administrator. As I stated in my written testimony, I had the opportunity to testify before the Senate Judiciary Committee in 2009, after my tenure as Administrator, and voiced my support for eliminating the sentencing disparity between the two substances.

- 2. How did your time as Governor impact your views on the crack and powder cocaine disparity?**

My experience as a federal prosecutor and Governor has emphasized to me that the crack-powder disparity undermines confidence in our criminal justice system. This reduced confidence makes it harder to develop informants and cooperating witnesses.

**3. What operational challenges would DEA face trying to enforce an adjustment to the crack and powder cocaine ratio?**

None, to my knowledge.