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Dear Chairman Durbin, Ranking Member Grassley, and Committee Members:

On behalf of the National Association of Assistant United States Attorneys (NAAUSA), representing the interests of over 6,300 Assistant U.S. Attorneys working in the 94 U.S. Attorney Offices, I write to provide the following answers to Questions for the Record from the June 22, 2021 hearing entitled “Examining Federal Sentencing for Crack and Powder Cocaine.”

Questions for the Record from Senator Thom Tillis

1. Do we have sufficient data at both the federal and state levels to track recidivism rates for crack and powder cocaine offenders? If not, what are the barriers to collecting this information?

The U.S. Sentencing Commission regularly issues reports regarding recidivism rates for crack and powder cocaine offenders. These reports repeatedly find higher recidivism rates among crack cocaine offenders. In a February 2017 report¹ analyzing offenders released in 2005, the U.S. Sentencing Commission found the overall recidivism rate among drug offenders to be 50.0%. The recidivism rate for powder cocaine offenders was 43.8%, the lowest of any drug type. Conversely, crack cocaine offenders had the highest recidivism rate among any drug type at 60.8%. This trend continued in a January 2022 report² analyzing offenders released in 2010. This report found the overall recidivism rate among drug offenders to be 47.9%. The recidivism rate for powder cocaine offenders remained the lowest at 41.8%. The recidivism rate for crack cocaine offenders remained the highest at 57.8%.

The U.S. Sentencing Commission’s regular reporting on this issue provides consistent and comparable data on the subject,

2. As a prosecutor, what is your view of the efficacy of maintaining the current ratio for crack and powder cocaine? Does it protect public safety or lead to excessive incarceration?

The current ratio protects public safety by acknowledging the destructive impact of crack cocaine and the unique criminogenic characteristics of crack offenders.

Executive Director
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Washington Reps.
Jason Briefel
Natalia Castro

Counsel
Debra Roth

First, the manufacturing process for crack cocaine makes the substance more concentrated. Additionally, the method of ingestion –smoking – makes the effects shorter lived. Although chemically, crack and powder cocaine are similar, the intense, short term high produced by crack results in increased binge use, chronic use, and greater risk of overdose compared to powder cocaine.³ The lower threshold quantity required to trigger criminal penalties for crack cocaine reflects the higher level of destruction

¹ [Recidivism Among Federal Drug Trafficking Offenders \(ussc.gov\)](https://www.uscourts.gov/uscsc/reports/2017-02-01-recidivism-among-federal-drug-trafficking-offenders)

² [Recidivism of Federal Drug Trafficking Offenders Released in 2010 \(ussc.gov\)](https://www.uscourts.gov/uscsc/reports/2022-01-01-recidivism-of-federal-drug-trafficking-offenders-released-in-2010)

³ [Crack vs Cocaine: What’s The Difference Between Crack & Cocaine? \(americanaddictioncenters.org\)](https://www.americanaddictioncenters.org/crack-vs-cocaine)

caused by this drug. Further, it enables prosecutors to seek longer penalties. This is not “excessive incarceration,” it is an approach proven to reduce revictimization. The U.S. Sentencing Commission has confirmed that longer sentences have a deterrent effect that reduces recidivism by 30 to 45 percent.⁴

Second, the ratio properly reflects the criminogenic characteristics of crack offenders at the federal level. Federal prosecutors rarely engage on possession cases, which are handled by state/local law enforcement. Instead, federal law enforcement efforts are primarily focused on trafficking and high harm drug offenses. In these cases, there are significant differences in the criminal histories, recidivism rates, and involvement with weapons and violence between those who traffic in powder cocaine and those who traffic in crack. The January 2022 U.S. Sentencing Commission report⁵ found that crack cocaine offenders had the *lowest* proportion of drug offenders in the *lowest criminal history category* and the *highest* proportion of offenders in the *highest criminal history category*. In 2021, nearly 40% of crack cocaine trafficking offenders had their sentence increased for possessing a weapon.⁶ That is compared to only 21% of powder cocaine offenders in the same year.⁷ Finally, 21.9% of reoffending crack offenders committed assault and 16.4% went back to drug trafficking. Crack cocaine offenders have extensive criminal histories, are more likely to reoffend, and most commonly reoffend by committing violent acts or returning to a life of drug trafficking. Since we know longer sentences deter reoffending, imposing longer sentences on crack cocaine offenders by requiring lower threshold amounts to trigger criminal penalties aligns with the drug’s impacts.

3. Do you agree with the 1-to-1 ratio suggested in the *EQUAL Act*? Or recommend another ratio?

NAAUSA is concerned the 1-to-1 ratio suggested will lead to less convictions of crack cocaine offenders and shorter sentences for those who are convicted. Given that shorter sentences increase the likelihood of reoffending, we are concerned the 1-to-1 ratio will enable crack cocaine offenders to revictimize their communities, particularly in communities of color. Ultimately, NAAUSA feels crack and powder cocaine are not the same and should not be treated the same. However, should Congress ultimately determine that action is warranted to equalize the penalties between powder cocaine and crack cocaine, NAAUSA would urge members to give strong consideration to lowering the quantity thresholds for powder cocaine to match the existing thresholds for crack cocaine, thereby achieving the goal of equality of punishment across the board.

Our nation is experiencing a drug overdose epidemic. Last year, overdose deaths topped 100,000 annually. We continue losing Americans everyday as drug traffickers become increasingly experiential with their drug combinations and pervade our communities. Now is not the time to reduce drug penalties and increase the risk of revictimization.

Questions for the Record from Senator Charles E. Grassley

1. In your written testimony, you wrote, “rather than adjusting sentences as a whole, seeking limited adjustments based on risk of community harm may present a more targeted approach to reforms.”
 - a. Can you expand more on this point and describe how this adjustment could be helpful in examining federal drug sentencing laws?

Research indicates retroactive sentence adjustments for large classes of offenders do not reduce recidivism.⁸ However, in 2017 the U.S. Sentencing Commission found crack offenders who received safety valve sentence reductions – indicating they did not have a significant prior criminal history – recidivated at a substantially lower rate (49% compared to 64.7%). This represents a targeted approach to provide relief for those who do not pose as significant a risk of reoffending. That being said, NAAUSA

⁴ [Length of Incarceration and Recidivism \(ussc.gov\)](https://www.ussc.gov/length-of-incarceration-and-recidivism)

⁵ [Recidivism of Federal Drug Trafficking Offenders Released in 2010 \(ussc.gov\)](https://www.ussc.gov/recidivism-of-federal-drug-trafficking-offenders-released-in-2010)

⁶ [Quick Facts on Crack Cocaine Trafficking Offenses \(ussc.gov\)](https://www.ussc.gov/quick-facts-on-crack-cocaine-trafficking-offenses)

⁷ [Quick Facts on Powder Cocaine Trafficking Offenses \(ussc.gov\)](https://www.ussc.gov/quick-facts-on-powder-cocaine-trafficking-offenses)

⁸ [Recidivism Among Offenders Receiving Retroactive Sentence Reductions \(ussc.gov\)](https://www.ussc.gov/recidivism-among-offenders-receiving-retroactive-sentence-reductions)

supports keeping the safety valve provisions limited and targeted to ensure their effectiveness at preventing recidivism and granting relief to those most appropriate.

Additionally, programs that have substantially and continually proven to reduce recidivism, combat drug addiction, and promote good behavior should be expanded rather than providing blanket sentence adjustments.⁹ Inmates who demonstrate sustained participation and engagement in these programs may be eligible for early release. There are many examples of rehabilitated inmates who received early release and went on to become beacons for ending addiction and drug trafficking in their communities. A targeted approach that provides inmates an opportunity to demonstrate their commitment to living a law-abiding life is far more appropriate than adjusting sentences as a whole for a class of offenders with the highest recidivism rates.¹⁰

2. Under the current federal 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?

Yes. Federal law enforcement focuses our resources on drug trafficking networks and high harm drug offenses. Federal law enforcement rarely prosecutes drug possession cases. State and local law enforcement primarily handle possession cases. A November 2021 Congressional Research Service report found that in 2020, 98.7% of federal drug cases involved drug trafficking.¹¹ NAAUSA feels most conversations about drug possession should occur at the state and local level, not the federal level. Congress must recognize that federal law enforcement focuses our efforts on drug trafficking, which often also involves gun violence, financial crimes, and other organized criminal activity.

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

While drug prices vary by location, crack cocaine is generally less expensive than powder. Powder cocaine has a street price of \$100 to \$125 per gram. Crack cocaine has a street price of \$5 to \$30 per rock.¹² The lower cost, combined with the shorter duration of the high the drug produces, results in increased chronic and binge use. This makes the drug more addictive and increases the risk of overdose. Because crack cocaine is more addictive and available at a lower cost, it can spread rapidly in low-income communities leaving a lethal trail in its wake.

4. 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?

In 2021, the U.S. Sentencing Commission reports the median base offense corresponded with trafficking between 28 and 112 grams of crack cocaine.¹³ The equivalent to 140 to 560 “rocks” – the individual units in which crack is sold. At up to \$30 a rock, the median federal offender may be trafficking up to \$16,800 worth of crack cocaine.¹⁴ In 2021, the Commission reports the median base offense corresponded with trafficking between 5 and 15 kilograms of powder cocaine.¹⁵ The lower quantities thresholds required to trigger criminal penalties for crack cocaine offenses allow law enforcement to combat crack traffickers early.

⁹ [Recidivism and Federal Bureau of Prisons Programs: Drug Program Participants Released in 2010 \(ussc.gov\)](#)

¹⁰ [Recidivism Among Federal Drug Trafficking Offenders \(ussc.gov\)](#)

¹¹ [IFI1965 \(congress.gov\)](#)

¹² [Crack vs. Cocaine | Difference Between Crack and Coke \(drugrehab.com\)](#)

¹³ [Quick Facts on Crack Cocaine Trafficking Offenses \(ussc.gov\)](#)

¹⁴ [Crack vs. Cocaine | Difference Between Crack and Coke \(drugrehab.com\)](#) (finding a rock of crack is roughly one fifth of a gram)

¹⁵ [Quick Facts on Powder Cocaine Trafficking Offenses \(ussc.gov\)](#)

Thank you for considering the perspective of NAAUSA. Please do not hesitate to reach out to our Washington representative Natalia Castro (ncastro@shawbransford.com) regarding this matter.

Respectfully,

A handwritten signature in cursive script, appearing to read "Steven Wasserman".

Steven Wasserman
President