

# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510–6275

May 14, 2021

The Honorable Richard Durbin  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Durbin:

Crime and drug use are serious problems in the United States, and are often inextricably intertwined. Hundreds of thousands of Americans have died from drug overdoses, and many more suffer from substance use disorders. Specifically, according to the Centers for Disease Control and Prevention (CDC), nearly 841,000 people have died from overdoses since 1999.<sup>1</sup> While our nation is grappling with a poly-drug abuse crisis, I want to highlight and call attention to one drug in particular: cocaine.

Cocaine is a powerful and deadly drug. According to the 2020 Drug Enforcement Administration (DEA) National Drug Threat Assessment, “[p]roduction, trafficking, and abuse of cocaine consistently pose a threat to the safety and security of citizens and law enforcement.”<sup>2</sup> Deaths from cocaine overdose have increased by about 251% from 2010 to 2018.<sup>3</sup> The supply of deadly cocaine entering the United States is increasing, too. According to Customs and Border Patrol (CBP), seizures of cocaine nationwide have increased by 70% from 2018 to 2019.<sup>4</sup>

Drug manufacturers and distributors know how to manipulate substances, markets, and distribution networks to turn a profit. Cartels are increasingly combining cocaine with dangerous synthetic substances, like fentanyl. According to the DEA, overdose deaths involving cocaine

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<sup>1</sup> Centers for Disease Control and Prevention, Opioid Overdose, Drug Overdose Deaths, “Drug Overdose Deaths Remain High,” available at: [https://www.cdc.gov/drugoverdose/data/statedeaths.html#:~:text=Drug%20Overdose%20Deaths%20Remain%20High,2019%20\(21.6%20per%20100%2C000\).](https://www.cdc.gov/drugoverdose/data/statedeaths.html#:~:text=Drug%20Overdose%20Deaths%20Remain%20High,2019%20(21.6%20per%20100%2C000).)

<sup>2</sup> “2020 Drug Enforcement Administration National Drug Threat Assessment,” U.S. Department of Justice, Drug Enforcement Administration, Cocaine, p. 29, available at: [https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment\\_WEB.pdf](https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf).

<sup>3</sup> *Id.* at 30.

<sup>4</sup> *Id.* at 33.

and another synthetic substance increased from 167 deaths in 2010 to 8,659 deaths in 2018, a staggering 5,085% increase.<sup>5</sup>

Emerging drug threats require that we in Congress adapt and morph how we prevent, control, and punish. This Committee has historically responded to emerging and changing drug trends by holding hearings and advancing legislation. Going through the steps of holding briefings, hearings, and debating legislation can be time-consuming. However, doing so is necessary.

It is with this in mind that I request a hearing to discuss cocaine. Cocaine control efforts have a storied past. Congress passed the Anti-Drug Abuse Act in 1988. In the 1980s, it was widely believed that cocaine base (or crack cocaine) had higher abuse potential and associated social harms relative to powder cocaine. Accordingly, the law established penalties on a 100:1 scale, meaning that 500g of powder cocaine carried the equivalent criminal sentence to 5g of crack cocaine. Fast-forward to 2010, where Congress acted in a bipartisan manner to pass a law modifying the powder cocaine to crack cocaine ratio from 100:1 to 18:1. And, as you're well aware, the *First Step Act* ensured that this change in the law would apply retroactively. Currently, states have varied approaches on how they treat powder and crack cocaine. For instance Arizona sentences crack to powder cocaine at 12:1; Missouri at 18.75:1; New Hampshire at 18:1; Maine at 3.5:1; and Iowa at 2.5:1, whereas other states are at 1:1 sentencing ratios.<sup>6</sup>

Despite the changing legal landscape on controlling cocaine substances, there's still much unknown. For instance, there's a lack of data on what impact the states' actions on changing the ratios has been. It is even more difficult to assess the overall rise in violent crime nationwide and delays in criminal arrests and prosecutions caused by COVID-19. Also, only two years since its passage, there's a lack of concrete data on how the *First Step Act's* retroactive application of the *Fair Sentencing Act* has affected recidivism rates. Lastly, while experts have noted that the way cocaine is ingested and administered is important in assessing the differences in behavioral effects between powder and crack cocaine, it's unclear how much of each substance has to be ingested for its users to get high, or worse, to suffer an overdose.

I understand and wholly empathize with the horrible unintended consequences of previous legislation that led to racial disparities in sentencing. Our criminal justice system is based on equal application of the law. I believe that justice is blind. Therefore, anything contrary is un-American. This disparate racial impact is just one of many considerations, however, in reviewing how to address cocaine. Ultimately, cocaine is a deadly and dangerous substance, and protecting all Americans is the highest priority.

It has been over a decade since this body convened a hearing dedicated to discussing cocaine. In that time, states – our laboratories of Democracy – have enacted a range of sentencing policies regarding cocaine offenses. This Committee should explore the successes and

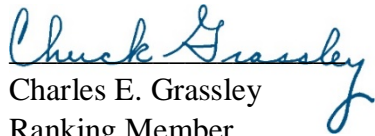
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<sup>5</sup> *Id.* at 31.

<sup>6</sup> “Crack-Cocaine Disparity Reform in the States,” Families Against Mandatory Minimums, available at: <https://fammm.org/wp-content/uploads/Crack-Disparity-in-the-States.pdf>.

challenges stemming from those state policies, as it did when crafting the *First Step Act*. This is a complicated issue that warrants the attention of a full committee hearing, especially in light of potential consideration of the *EQUAL Act*. The Senate is renowned as the world's greatest deliberative body. This designation is earned, not given. It's necessary to have a hearing on this issue before any legislation can be considered. I appreciate your dedication to this issue and hope that a hearing outlining how to approach future efforts to assess cocaine substances can be held this Congress.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style. The first name "Chuck" is written in a larger, more prominent script, and "Grassley" follows in a similar but slightly smaller script. The signature is positioned above the printed name and title.

Charles E. Grassley  
Ranking Member  
U.S. Senate Judiciary Committee