

Statement of Russell Coleman

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Hearing on "Examining Federal Sentencing for Crack and Powder Cocaine" Senate Judiciary Committee

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Chairman Durbin, Ranking Member Grassley, Honorable Members of the Committee, Governor Hutchinson, Distinguished Guests:

My name is Russell Coleman, and it is my honor and privilege to appear before this committee in support of the bipartisan EQUAL Act. My position on this legislation may come as a surprise to those of you who know me and my law enforcement background, but it is that very experience, which has challenged and humbled me, that has brought me to this hearing today.

I am currently a partner in a private law practice, Frost Brown Todd, in Louisville, Kentucky. Prior to that, I was appointed U.S. Attorney for the Western District of Kentucky by former President Donald Trump, confirmed unanimously by the Senate, and sworn into office September 22, 2017. I served in that role through my resignation on January 20, 2021.

Earlier in my career, I worked here on the Hill among many of you as counsel for your colleague and the senior senator from Kentucky, Republican Leader Mitch McConnell. Prior to that, I served as a Special Agent with the Federal Bureau of Investigation, with a diverse portfolio of national security, white collar, and violent crime cases. While at the FBI, I volunteered for a 2007 temporary duty assignment in support of Operation Iraqi Freedom in Anbar Province, Iraq. I loved working in federal law enforcement, it was my dream job growing up in rural Western Kentucky, and had I not suffered a severe spinal injury, I would still be in that job today. I believe deeply in the rule of law.

That said, my tenure as chief federal law enforcement officer for the 53 counties of my district, which includes Louisville, a city ravaged by violent crime and racial conflict, has led me to seek out new approaches to our community's struggles. During my last year in office, Louisville saw 173 murders and 587 shootings, and unprecedented racial unrest and distrust between police and the Black community.¹ I am haunted by each and every death that occurred on my watch; I am devastated to have left office with Kentucky's largest city so divided along racial and socio-economic lines; and I was disheartened to see Louisville Metro Police Department become the second law enforcement entity in the country to come under investigation for civil rights violations in this new Administration. I have served with many good men and women in that Department who I have come to respect.

Louisville, like many communities across the country, is at a crossroads. We can come together and heal, or we can continue to be torn apart by violence, mistrust, and division. I want to be a part of the healing. I want to lift up, embrace, and help implement common-sense solutions that build trust between law enforcement and the communities we serve, and most importantly, maintain public safety. That is why I supported, and continue to be active in, Group Violence Intervention in Louisville; that is why I joined the board of the Christopher 2X Game Changers

organization focused on reducing violent crime and assisting survivors, particularly our young people; and that is why I support common-sense criminal justice reforms like the EQUAL Act, which will make our justice system fairer and more effective.

In researching the history of the crack/power cocaine disparity, it is worth noting that at the time the original disparity was created by Congress in the Drug Abuse Act of 1986, the Reagan Administration had reportedly proposed a 20-1 disparity.² Congress, understandably panicked about increasing drug use and eager to appear as tough as possible, instead passed a disparity five times more significant.³ Neither the 20:1 nor the 100:1 disparity had a scientific or penological justification. But these decisions did have real consequences.

In 2010, the U.S. Sentencing Commission reported a disturbing racial skew related to crack offenses: 79 percent of 5,669 sentenced crack offenders in 2009 were black, versus 10 percent who were white and 10 percent who were Hispanic. The figures for the 6,020 powder cocaine cases were far less skewed: 17 percent of these offenders were white, 28 percent were black, and 53 percent were Hispanic.⁴ The Commission found a 115-month average imprisonment for crack offenses versus an average of 87 months for cocaine offenses, which resulted in African Americans spending significantly more time in our country's prison system, for an excessive penalty created with no scientific or penological justification.⁵

In response, Democrats and Republicans reached a compromise in passing the Fair Sentencing Act, which took the disparity from 100:1 to 18:1.⁶ It must be noted this legislation was supported by Senator Jeff Sessions (R-AL), who would later become my boss as Attorney General of the United States, and a man no one could ever label as "soft on crime."

At least one Republican, however, did take issue with the arbitrariness of the decrease, and argued Congress should finish the job and eliminate the disparity altogether. Texas Republican Representative Ron Paul, father of Kentucky's junior senator, my friend and your colleague Senator Rand Paul, said at the time, "It's called the Fair Sentencing Act. I'd like to rename it, though. I'd like to call it the 'Slightly Fairer Resentencing Act.'"⁷

Of course, it was the well-respected leaders at the helm of this committee who would take that next step toward fairness. With the First Step Act, their bipartisan prison and sentencing reform legislation signed into law by President Trump at the end of 2018, Senators Durbin and Grassley applied the Fair Sentencing Act's reduced disparity retroactively.⁸

Today, with the EQUAL Act, this committee has the opportunity to make history, and support a bipartisan bill that will finally and fully eliminate this injustice.

I support the EQUAL Act for three reasons:

- 1) The sentencing disparity lacks a scientific basis
 - Crack and powder cocaine are chemically the same drug, with similar health effects, just ingested differently.
 - This disparity sends the erroneous message that one is less dangerous than the other.

- 2) The crack/powdered cocaine disparity is a distraction from the ongoing methamphetamine and opioid crises
 - Evidence shows the overall use of cocaine has largely been on the decline since its peak in the 1980s, according to the National Survey on Drug Use and Health (NSDUH).⁹
 - The Drug Enforcement Administration, in its 2020 National Drug Threat Assessment, found that the number of cocaine-related reports in 2019 was 14% lower than the year prior and less than half the number from 2006.¹⁰
 - When you talk to drug task forces and law enforcement on the ground, they will tell you more resources should be focused on addressing the increase in methamphetamine and opioid overdoses; the U.S. Centers for Disease Control and Prevention reports that from 2011-2016, the number of drug overdose deaths involving meth use more than tripled, from 1,887 to 6,762, with opioid-related overdose deaths increasing at an even greater magnitude.¹¹

- 3) The disproportionate impact on Black people and communities is unjust, and damages the credibility of our justice system
 - While both Blacks and whites use crack cocaine at roughly similar (and low) rates overall nationwide, most crack offenders convicted and sentenced (88%, according to the Bureau of Justice Statistics) are Black, and most powder cocaine offenders convicted and sentenced are white or Hispanic.¹²
 - So it follows that crack-powder disparities create a racially disparate impact in sentencing, resulting in far more egregious sentences for Blacks than for whites or Hispanics, who are using or selling chemically identical drugs.
 - This unjustified sentencing disparity adds to the unprecedented level of distrust in the fairness of our criminal justice system, making it more difficult for law enforcement officials to uphold public safety.

Finally, during my outreach to career federal prosecutors, state and federal narcotics officers at the senior levels, local and state law enforcement leaders, and judges (those on the front lines of battling drug use and violence in our communities), I was met with a near unanimous belief that this is the right legislation at the right time. Had their counsel been different, I would take pause in supporting this legislation, as I would never support a bill that did not maintain the necessary tools and safeguards prosecutors need to ensure public safety is paramount, and punishment fits the crime.

It is worth noting that in instances in which an offender uses a firearm or violence in commission of a crime related to crack or powder cocaine, prosecutors maintain the ability to apply sentencing enhancements that meet the public safety need and ensure that our communities are protected.

Given my background and conservative leaning, Mr. Chairman, I am certain there are many areas where you and I disagree. On the EQUAL Act, I am pleased to say we have found consensus. I am inspired by the example you and Ranking Member Grassley have set by continuing to work together on common-sense reforms that will make our justice system fairer and stronger.

I am honored to stand with Governor Hutchinson, the former DEA Administrator incredibly well-respected within the law-and-order community, the National District Attorneys Association, and the Major Cities Chiefs Association in support of the EQUAL Act, and I urge elimination of a sentencing disparity arbitrarily created, lacking in scientific or penological justification, and disproportionate in its impact on communities of color.

It's been a pleasure to be back on the Hill amongst old friends on both sides of the aisle, and I hope my testimony here today has been a value-add to this committee.

I urge your support for the EQUAL Act.

¹ Louisville Courier Journal, *170-plus killings and few answers: Louisville besieged by record homicides and gun violence*, (2021). <https://www.courier-journal.com/story/news/crime/2021/01/01/louisville-violence-173-homicides-and-few-answers-record-year/6540016002/>.

² David A. Sklansky, *Cocaine, Race, and Equal Protection*, 47 Stanford Law Review 1283 (1995). <https://law.stanford.edu/publications/cocaine-race-and-equal-protection/>.

³ Pub. L. No. 99-570, 100 Stat. 3207.

⁴ U.S. Sentencing Commission, *Race of Drug Offenders for Each Drug Type*, 2009 Datafile, (2010). <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2009/Table34.pdf>.

⁵ U.S. Sentencing Commission, *Overview of Federal Criminal Cases Fiscal Year 2009*, pg. 6-8 (2010). https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2010/20101230_FY09_Overview_Federal_Criminal_Cases.pdf.

⁶ Pub. L. No. 111-220, 124 Stat. 2372.

⁷ Congressional Record, Vol. 156, Number 112, Pages H6196-H6204, (Wednesday, July 28, 2010). <https://www.govinfo.gov/content/pkg/CREC-2010-07-28/html/CREC-2010-07-28-pt1-PgH6196.htm>.

⁸ Pub. L. No. 115-391, 132 Stat. 5194.

⁹ Substance Abuse and Mental Health Services Administration, *Results from the 2018 National Survey on Drug Use and Health: Detailed Tables* (2019). <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHDetailedTabs2018R2/NSDUHDetailedTabs2018.pdf>.

¹⁰ Drug Enforcement Administration, *2020 Drug Threat Assessment*, pg. 29 (2021). https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf.

¹¹ National Vital Statistics Reports, *Drugs Most Frequently Involved in Drug Overdose Deaths: United States, 2011–2016*, Vol. 67, Number 9. (2018). https://www.cdc.gov/nchs/data/nvsr/nvsr67/nvsr67_09-508.pdf.

¹² Bureau of Justice Statistics, *Drug Offenders in Federal Prison: Estimates of Characteristics Based on Linked Data*, (2015). <https://bjs.ojp.gov/content/pub/pdf/dofp12.pdf>.