



**Supplement to Prepared Testimony of Vikrant P. Reddy**

**Senior Policy Analyst, Texas Public Policy Foundation and Right on Crime**

**Re: The “All Drugs Minus 2” Amendment to § 2D1.1 of the U.S. Federal Sentencing Guidelines**

To the Members of the Commission:

Thank you for the opportunity to supplement my prepared testimony of March 13, 2014. In my remarks I urged the Commission to amend the Federal Sentencing Guidelines in ways that reflect the best practices in the states. Many states, I noted, had reduced drug penalties as crime rates declined and continued to see crime declines. The federal criminal justice system, I argued, could make similar penalty reductions and realize similar results. The Commission asked whether such an analogy was apposite, given that the state penalties I identified were drug possession penalties, whereas the federal prosecutions are primarily for drug trafficking.

In response, I noted that states have reduced penalties for a variety of crimes (e.g., burglary, property theft, simple assault) and nevertheless seen crime rates decline. It would be curious if trafficking did not fit the broader pattern. The larger issue, I argued, is that for many years penalties for most crimes have been ratcheted up to a degree that is largely detached from a direct connection to public safety outcomes.

I want to supplement that answer with another note. Several states have, in fact, reduced penalties for non-possession offenses, and they have seen crime rates steadily decline. The following examples are taken from research produced by the Pew Charitable Trusts and the Council on State Governments.

**South Carolina: S 1154 (2010)**

- Eliminated mandatory minimums and allowed probation, suspended sentences, parole, earned time and work release for first or second drug offenses, including the manufacture, distribution, dispensing, delivery or purchase of drugs below certain weight thresholds. Offenses above the weight thresholds are defined as trafficking and the mandatory minimums remain.
- The mandatory minimum sentence for a third offense of manufacturing, distribution, delivery, dispensing or purchase of narcotics, LSD, cocaine or methamphetamine below the trafficking thresholds was reduced from 15 years to 10 years.

- Probation, suspended sentences, parole, earned time and work release were allowed for third or subsequent offenses (and thus mandatory minimums were eliminated) if the weight of the drugs is below the trafficking threshold and all of the prior offenses were possession offenses.
- Added an intent element to the school zone provision, so that the defendant must have knowledge that he or she was offending in a school zone.
- Equalized penalties for crack and powder cocaine offenses, reducing the penalties for crack offenses to those of powder cocaine.

**Arkansas: SB 570 (2011)** *(for more information, see attached table)*

- Revised drug statutes to distinguish drug users and addicts from career criminals. The legislation reduced the available sentencing range and maximum penalties for less serious offenses and retains or expands the penalty range for offenses with large amounts of drugs (see attached tables).
- Separated PWID (Possession with Intent to Distribute) from manufacturing and delivery and set punishments appropriate for each controlled substance.

**Kentucky: HB 463 (2011)**

- Distinguished between trafficking and “peddling” by creating weight thresholds for drug trafficking, and reduced the penalties for sales, manufacturing, and delivery offenses below the trafficking threshold, while maintaining the penalty levels for those offenses over the threshold.
  - For a first offense, trafficking in a controlled substance in the first degree (Schedule I or II narcotics) of 4 grams or less or 10 dosage units or less was reduced from a Class C felony (5-10 years) to a Class D felony (1-5 years).
  - For a second or subsequent offense, trafficking in a controlled substance in the first degree (Schedule I or II narcotics) of 4 grams or less or 10 dosage units or less was reduced from a Class B felony (10-20 years) to a Class C felony (5-10 years).
  - For a first offense, trafficking in methamphetamine in the first degree of 2 grams or less was reduced from a Class C felony (5-10 years) to a Class D felony (1-5 years).
  - For a second or subsequent offense, trafficking in methamphetamine in the first degree of 2 grams or less was reduced from a Class B felony (10-20 years) to a Class C felony (5-10 years)
  - For a first offense, trafficking in a controlled substance in the second degree (Schedule I or II non-narcotics) of 4 grams or less or 10 dosage units or less was reduced from a Class D felony (5-10 years) to a Class D felony with a maximum sentence of 3 years; for Schedule III drugs, the threshold is 20 dosage units or less.

- For a second or subsequent offense, trafficking in a controlled substance in the first degree (Schedule I or II non-narcotics) of 4 grams or less or 10 dosage units or less was reduced from a Class C felony (5-10 years) to a Class D felony (1-5 years); for Schedule III drugs, the threshold is 20 dosage units or less.
- For a first offense, trafficking in a controlled substance in the third degree (Schedule IV or V drug) of 4 grams or less or 20 dosage units or less was reduced from a Class A misdemeanor to a Class A misdemeanor subject to presumptive probation.
- For a second or subsequent offense, trafficking in a controlled substance in the third degree (Schedule IV or V drug) of 4 grams or less or 20 dosage units or less was reduced from a Class D felony (1-5 years) to a felony with the maximum sentence of 3 years.
- Reduced the size of the school zone (for drug sales and other offenses) from 1000 yards to 1000 feet.

**Ohio: HB 86 (2011)**

- Removed the presumption of prison for several felony drug offenses, including trafficking in the second lowest quantity range of cocaine, LSD, heroin and marijuana, and the lowest range marijuana trafficking in a school zone, in favor of guidance against a prison term.
- Created new penalty classes for trafficking and possession of marijuana and hashish based on a new quantity threshold, which carries potentially shorter mandatory minimums.
- Equalized penalties for crack and powder cocaine offenses; both are now treated as cocaine. Penalties for crack offenses were reduced, while some penalties for powder cocaine were increased to a level in between the prior two levels.
- Made additional categories of offenders, including certain low-level trafficking offenders eligible for "intervention in lieu of conviction" when the offender's drug use contributed to the offending.

**Georgia: HB 1176 (2012)**

- Provided judges the "safety valve" option of departing below the mandatory minimum for certain drug offenses, including trafficking and manufacturing, if the judge makes certain findings (the defendant had a limited role, did not use or possess a weapons, had no priors, there were no serious injuries or deaths, and the interests of justice would be served by the downward departure).

**Pennsylvania: SB 100 (2012)**

- Authorized County Intermediate Punishment (CIP), with penalties between incarceration and probation, such as house arrest, intensive supervision, drug treatment

and monitoring, for persons convicted of lower quantity drug felonies and subject to a mandatory sentence.

**Oregon: HB 3194 (2013)<sup>1</sup>**

- Changed sentencing guidelines for certain marijuana possession, delivery, and manufacture offenses so that most people who are charged with these crimes will receive probation instead of prison time.
- Allowed probation instead of prison for certain drug trafficking crimes: Repeals part of Measure 57 so that people convicted of these crimes can receive probation in lieu of prison time.
- Permitted the judge to impose a lesser sentence for certain drug trafficking crimes: This provision repeals a prohibition on these *downward departures* for certain crimes.

Similar penalty reductions followed by crime declines have been observed in California, Colorado, New Jersey, and New York.

It is important to note, of course, that these penalty adjustments did not necessarily *cause the decline* in crime rates. It is clear, however, that the adjustments did not *cause increases* in crime rates.

Thank you again for the opportunity to include this supplement.

---

<sup>1</sup> The Oregon legislation was only recently passed, and thus no data exists to determine whether crime rates have declined since the passage of the legislation.

The Public Safety Improvement Act (Act 570) revises Arkansas's drug statutes to distinguish drug users and addicts from career criminals. Accordingly, the legislation reduces the available sentencing range for less serious offenses and retains or enhances penalties for possessing, selling, or manufacturing large amounts. The Act does not decriminalize any controlled substance.

Old Law			Public Safety Improvement Act (Act 570)		
Amount	Felony class	Sentence Range (Years)	Amount	Felony class	Sentence Range (Years)

■ Methamphetamine						
Possession	Less than 0.2g	C	3-10	Less than 2g	D	0-6
	*More than 0.2g	Y	10-40 or life	2g to less than 10g	C	3-10
				10g to less than 200g	B	5-20
Manufacturing	200mg to less than 28g	Y	10-40 or life	Less than 2g	D	0-6
	28g to less than 200g	Y	15-40 or life	More than 2g (for personal use)	A	6-30
	200g to less than 400g	Y	20-40 or life	More than 2g (for distribution)	Y	10-40 or life
	400g +	Y	40 or life	Second offense (any amount)	Y	10-40 or life
Delivery	200mg to less than 28g	Y	10-40 or life	Less than 2g	C	3-10
	28g to less than 200g	Y	15-40 or life	2g to less than 10g	B	5-20
	200g to less than 400g	Y	20-40 or life	10g to less than 200g	Y	10-40 or life
	400g +	Y	40 or life			
Trafficking	None			200g +	Y	10-40 or life

■ Cocaine						
Possession	Less than 1g	C	3-10	Less than 2g	D	0-6
	*More than 1g	Y	10-40 or life	2g to less than 10g	C	3-10
				10g to less than 200g	B	5-20
Delivery or Manufacturing	1g to less than 28g	Y	10-40 or life	Less than 2g	D	0-6
	28g to less than 200g	Y	15-40 or life	2g to less than 10g	B	5-20
	200g to less than 400g	Y	20-40 or life	10g to less than 200g	Y	10-40 or life
	400g +	Y	40 or life			
Trafficking	None			200g+	Y	10-40 or life

		Old Law		Public Safety Improvement Act (Act 570)			
		Amount	Felony class	Sentence Range (Years)	Amount	Felony class	Sentence Range (Years)
<b>■ Marijuana</b>							
<b>Possession</b>	Less than 1oz	Class A Misdemeanor	Less than a year	Less than 4oz	Class A Misdemeanor	Less than a year	
	2nd offense	D	0-6	1oz to less than 4oz (second of-	D	0-6	
	3rd offense	C	3-10	4oz to less than 10lbs	D	0-6	
	*1oz to 10 lbs.	C	3-10	10lbs to less than 25lbs	C	3-10	
	*10 lbs. to less than 100 lbs.	B	5-20	25 lbs. to less than 100 lbs.	B	5-20	
	*100 lbs to less than 500	A	6-30	100 lbs. to less than 500 lbs.	A	6-30	
<b>Delivery or Manufacturing</b>	1oz to 10 lbs.	C	3-10	Up to 14g	Class A Misdemeanor	Less than a year	
	10 lbs. to less than 100 lbs.	B	5-20	Over 14g to less than 4oz	D	0-6	
	100 lbs to less than 500 lbs.	A	6-30	4oz to less than 25 lbs.	C	3-10	
	500 lbs. +	Y	10-40 or life	25 lbs. to less than 100 lbs.	B	5-20	
				100 lbs. to less than 500 lbs.	A	6-30	
<b>Trafficking</b>	None			500 lbs. +	Y	10-40 or life	

\*Under the old law, Possession with Intent to Deliver (PWID) was based on weight alone. Act 570 establishes factors that must be present for a rebuttable presumption of PWID.