

March 18, 2015

Judge Patti B. Saris, Chair
United States Sentencing Commission
One Columbus Circle, N.E., Suite 2-500
Washington, DC 20002-8002

RE: Issue for Comment #6: Flavored Drugs

Dear Judge Saris:

The Drug Policy Alliance, the nation's leading organization advocating for alternatives to punitive drug policies, appreciates this opportunity to comment on the proposed amendments to the sentencing guidelines. DPA works to reduce to the greatest extent possible the role that law enforcement plays in dealing with drug use and increase to the greatest extent possible the degree to which drug use is treated as a health issue.

The Commission seeks comment on whether the guidelines provide appropriate penalties for drug law violators who manufacture or create drugs that are packaged, colored or flavored in ways that appear to be designed to attract use by minors. We are aware that the Commission has decided to seek public comment on this matter after reportedly receiving comments on the matter. These commentators expressed concerns that illegal drugs have been manufactured in ways that resemble candy, and are packaged and marketed in quantities that are more accessible to minors. The Drug Policy Alliance has reviewed these reports and cannot substantiate their validity.

For nearly a decade, reports have circulated on the Internet of individuals intending to manufacture and market "candy-flavored" illegal drugs to minors. The earliest such reports of illegal drugs intended to appeal to minors took the form of "flavored methamphetamine." In 2007, an email bearing the signature of a Homeland Security official began circulating on the Internet warning that methamphetamine resembling the candy "Pop Rocks" was being handed out in schoolyards and was known as "Strawberry Quick." The Department of Homeland Security described this chain email as a hoax and declared that there was no evidence that methamphetamine was being flavored and given to minors.¹ Similarly, Partnership for Drug-Free Kids described flavored methamphetamine as "akin to the Loch Ness Monster: everyone has heard of it, but firsthand sightings are hard to track down and verify."²

In the same year that these reports emerged, United States Senators Dianne Feinstein and Charles Grassley introduced legislation that proposed increasing criminal penalties for anyone marketing "candy flavored drugs" to minors. In a statement, Senators Feinstein and Grassley indicated their concerns that "flavored meth – with child-friendly names like Strawberry Quick ...designed to get people to try it a few times,"³ was being marketed to minors. After receiving a sample of purported "flavored methamphetamine" with a distinct grape odor, the Drug Enforcement Administration (DEA) noted in 2009 that although flavored meth had "received extensive and often alarmist coverage in the mass media over the past two years,"⁴ the agency was unable to confirm that the sample included flavoring additives.

More recently, in testimony before the Commission regarding the issue of flavored drugs on March 12th, the Deputy Assistant Administrator for the Office of Diversion of the Drug Enforcement Administration Joseph T. Rannazzisi, urged the Commission to approach any changes to the guidelines in this area cautiously given "how few federal drug prosecutions to



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date have involved the manufacture of controlled substances designed with the intent of appealing to children.”⁵

Likewise, the Chair of the Probation Officer’s Advisory Group (POAG), Richard Bohlker, testified before the Commission on March 12th that POAG did not receive comments from representatives concerning drugs which were colored, packaged, or flavored in any way that appeared to be designed to attract use by children, nor was POAG aware of any federal prosecutions or “pattern of offenses” that were taking place nationally or regionally.⁶

Regarding commenter’s reports of manufacture or creation of drugs that are packaged or modified by coloring or flavoring with the intent of appealing to minors, commenters are perhaps conflating the aforementioned Internet hoax with Colorado and Washington State’s efforts to regulate marijuana-infused products to ensure reliability and safety. Colorado and Washington implemented the legal regulation, taxation and adult sale of small amounts of marijuana and marijuana-infused products. Both states implemented the taxation and regulation of marijuana after ballot measures were passed by voters in 2012. Marijuana businesses that are licensed to sell marijuana and marijuana-infused products to adult consumers are required to ensure purchasers are over 21 years of age, or risk civil and criminal penalties.⁷ Oregon and Alaska are expected to implement similar laws later this year following the passage last year of ballot measures by popular vote in both states. Underage sales of marijuana and marijuana-infused products are illegal under state law in both Colorado and Washington and both states impose restrictions on how state-legal marijuana products are advertised and marketed. In addition, both states require marijuana-infused products to be packaged in child resistant packaging.⁸

More than half of all states have passed laws regulating medical marijuana in some form and twenty-three states and the District of Columbia have laws that legalize and regulate marijuana for medicinal purposes. Many medical marijuana states have established legal frameworks for the manufacture and distribution of state-legal marijuana products for medical purposes, including the manufacture, distribution and sale of marijuana-infused products for medical use.⁹ Marijuana-infused products refer to any food, drink, tincture, or other product infused with marijuana.¹⁰ These products provide prolonged therapeutic benefits to medical marijuana patients. Certain marijuana-infused products can enable patients to access therapeutic benefits of marijuana despite physical limitations experienced by the patient. For instance, marijuana-infused lollipops can be an easier method of delivering medical marijuana to patients who have trouble swallowing or cannot keep food down. Researchers have found that medical marijuana is an effective therapy for the symptoms of serious illnesses including chemotherapy-induced nausea¹¹, HIV/AIDS¹², epilepsy¹³, chronic pain¹⁴, and multiple sclerosis.¹⁵

Since the people of Colorado and Washington State voted to legalize the adult possession and sale of recreational marijuana, state lawmakers have worked to strengthen regulations governing the manufacture, packaging and sale of marijuana-infused products. Both states require marijuana-infused products to be packaged in accordance with federal standards for child-resistant packing and prohibit packaging designed to appeal to minors.¹⁶ Packaging is required to be opaque, closable for any product intended for more than a single use or containing multiple servings, and labeled.¹⁷ Finally, marijuana-infused products are often packaged to reflect a reasonable or average dose, thus eliminating the need for the consumer to divide the product into multiple servings to avoid overconsumption, not, as a commenter noted, to make the items cheaper and more accessible to minors. The Washington State Liquor Control board must approve labeling and packaging for all marijuana-infused products. The Colorado Department of Revenue promulgated rules governing the labeling, packaging, and product safety for all marijuana products.¹⁸ Both Colorado and Washington require products that contain more than one serving to be homogenized to ensure uniform disbursement of cannabinoids throughout the product, and serving sizes must be clearly indicated.¹⁹ Finally, both states prohibit marijuana products, labels or packaging that are designed to be particularly appealing to minors.²⁰

The Drug Policy Alliance found no evidence to support concerns that marijuana-infused products are being manufactured by adults for sale or distribution to minors, or manufactured and marketed with the intention of appealing to minors. In fact, as outlined above, Colorado and Washington State refined their existing regulatory structure after implementing legalization, to ensure safety in response to several well-publicized events where minors accidentally consumed marijuana. It is notable that the U.S. Department of Justice did not intervene, but instead allowed Colorado and Washington to improve their regulatory schemes to ensure safety of minors.

Regarding state-legal marijuana activities, the U.S. Department of Justice issued guidance to U.S. Attorneys in 2011 and 2013²¹ establishing eight enforcement priorities in states that have implemented laws regulating legal medical or recreational marijuana. A stated priority in this guidance is ensuring that marijuana is not sold or diverted to minors. Consistent with witness statements, as well as previous stated positions on the matter by the Drug Enforcement Administration, Department of Homeland Security, and Partnership for Drug Free Kids we find no basis to support the commenter's concerns, and ample evidence that these concerns are based upon a debunked urban legend. To the extent that an individual is found to be engaging in this activity, the matter is more appropriately in the purview of the state, which can charge a person under existing drug laws of the state. The Commission should also strive to avoid the misapplication of long federal prison terms on individuals who were acting in compliance with state law.

As the Commission notes, the United States Sentencing Guidelines already subject an individual who distributes a controlled substance to a person under 21 years of age to twice the statutory maximum term of imprisonment than would otherwise apply. We note that available evidence fails to support the notion that long prison sentences deter criminal activity.²² The sentencing guidelines in their current form adequately address these offenses and should not be adjusted to increase penalties for conduct that cannot be substantiated.

Thank you for this opportunity to comment and thank you as well for your dedicated and deliberate attention to this very important issue.

Regards,



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¹ Department of Homeland Security, "Internet Hoaxes," last modified August 9, 2012, <http://www.dhs.gov/internet-hoaxes>.

² Partnership for Drug-Free Kids (formerly Partnership for a Drug-Free America), "Meth Ado About Nothing? Flavored Meth and Cheese Heroin Stories Smack of Fearmongering," accessed on March 13, 2015, <http://www.drugfree.org/join-together/meth-ado-about-nothing-flavored-meth-and-cheese-heroin-stories-smack-of-fearmongering/>.

³ Dianne Feinstein, "Senators Feinstein and Grassley Introduce Legislation to Penalize Drug Dealers Who Market Candy-Flavored Meth to Children," accessed on March 18, 2015,

<http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=2a23db2e-dffd-dee7-3504-5bf193466681>.

⁴ Department of Justice, Drug Enforcement Administration, Office of Forensic Sciences, *Microgram Bulletin: Volume 42, Number 1*, (Washington, DC January, 2009), 1-2.

⁵ *United States Sentencing Commission, Public Hearing on Proposed 2015 Amendments to the Federal Sentencing Guidelines*, 19 (2015) (statement of Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Diversion, Drug Enforcement Agency, U.S. Department of Justice).

⁶ *United States Sentencing Commission, Public Hearing on Proposed 2015 Amendments to the Federal Sentencing Guidelines*, 4 (2015) (statement of Richard Bohlker, Chair, Probation Officer's Advisory Group).

⁷ Colorado State Constitution, Article XVIII, Section 16(2)(b) and WAC § 314-55-079(1).

⁸ Colorado Revised Statutes § 12-43.4-202 and WAC § 314-55-105 and WAC 314-55-077.

⁹ See Ariz. Rev. Stat. §36-2801 (15), Cal. H&S. Code §11362.77 (d), Me. Rev. Stat. tit. 22, §2423-A (2)(G), Nev. Rev. Stat. §435A.200 (3)(b)(3), Or. Admin. R. 333-008-1245 (1), and Vt. Stat. tit. 18 §4474e (a)(1).

¹⁰ Marijuana-infused products are commonly referred to as marijuana "edibles"

¹¹ See for example F. C. Machado Rocha et al., "Therapeutic Use of Cannabis Sativa on Chemotherapy-induced Nausea and Vomiting Among Cancer Patients" *European Journal of Cancer Care* 17 (2008): 431-433.

¹² Margaret Haney, Judith Rabkin, Erik Gunderson, and Richard W. Fulton, "Dronabinol and Marijuana in HIV(+) Marijuana Smokers: Acute Effects on Caloric Intake and Mood," *Psychopharmacology (Berl)*, 181, (2005), 170-178;

Emily Woolridge, Simon Barton, Jonathan Samuel, et al., "Cannabis Use in HIV for Pain and Other Medical Symptoms," *Journal of Pain Symptom Management*, 29, (2005), 358-367.

¹³ See for example David Gloss and Barbara Vickrey, "Cannabinoids for Epilepsy," *Cochrane Database of Systematic Reviews*, 6, 2012.

¹⁴ See for example Mark A. Ware et al., "Smoked Cannabis for Chronic Neuropathic Pain: A Randomized Controlled Trial," *Canadian Medical Association Journal* 182 (2010): 694-701.

¹⁵ D.J. Rog, T.J. Nurmikko, C.A. Young, "Oromucosal Delta9-Tetrahydrocannabinol/Cannabidiol for Neuropathic Pain Associated with Multiple Sclerosis: an Uncontrolled, Open-Label, 2-Year Extension Trial," *Clinical Therapeutics*, 29, no. 9 (2007), 2068-2079; Paul F. Smith, "New Approaches in the Management of Spasticity in Multiple Sclerosis Patients: Role of Cannabinoids," *Journal of Therapeutics and Clinical Risk Management*, 6, (2010), 59-63.

¹⁶ Colorado Rule R 1001(C), Colorado Department of Revenue and WAC § 314-55-155.

¹⁷ Colorado Rule R 1004.5, Colorado Department of Revenue and WAC § 314-55-105.

¹⁸ Washington State Liquor Control Board, Label/Product Approval Process, accessed March 18, 2015, <http://www.liq.wa.gov/marijuana/producer-approval-process> and Colorado Rule R 1000 Series, Colorado Department of Revenue.

¹⁹ Labeling, Packaging, and Product Safety, R 1000 Series, Colorado Department of Revenue and Washington State Liquor Control Board, Label/Product Approval Process, accessed March 18, 2015, <http://www.liq.wa.gov/marijuana/producer-approval-process>.

²⁰ Colorado Rule R 1001(c), Colorado Department of Revenue and Washington State Liquor Control Board, Label/Product Approval Process, accessed March 18, 2015, <http://www.liq.wa.gov/marijuana/producer-approval-process>. See also WAC § 314-55-105.

²¹ James M. Cole, Deputy Attorney General, to United States Attorneys, Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use, U.S. Department of Justice, DAG Guidance 2011 and James M. Cole, Deputy Attorney General, to All United States Attorneys, Guidance Regarding Marijuana Enforcement, U.S. Department of Justice, DAG Memo 8-29-13 and

²² Jeremy Travis, Bruce Western, and Steve Redburn, eds. *Exploring Cause and Consequences of High Rates of Incarceration*, (Washington, DC: The National Academies Press, 2015), 345.