

SAM Smart Approaches to Marijuana

preventing another big tobacco

March 18, 2015

U.S. Sentencing Commission
Public_Comment@ussc.gov

To Whom It May Concern:

On behalf of SAM (Smart Approaches to Marijuana), I am writing today to express support for increasing the sentencing guideline range for controlled substances that are colored, packaged, or flavored in ways that appear to be designed to attract use by children.

SAM is a coalition of medical and other professionals dedicated to increasing scientific awareness about the harms of marijuana as well as advocating for fair and equitable marijuana sentences. Though SAM generally opposes minimum mandatory sentences or other sentence enhancements, we feel in this case that the crime of targeting minors through attractive packaging and products is especially dangerous and warrants more action.

We have long supported the “Saving Kids from Dangerous Drugs” bill offered by Senator Feinstein (S. 1686 in the 113th Congress) and it is our understanding that the Sentencing Commission has agreed to consider increasing the guidelines range in the manner suggested in that bill.

Drugs are now being filled with additives to make them taste like candy, with flavors such as strawberry, lemon, coconut, cinnamon and chocolate, and are being marketed in smaller amounts, making them cheaper and more accessible to children. These candied and flavored drugs are more harmful than other drugs because they deceive the young customer into believing that the drug product is not actually a drug, or at least not as potent as non-candied/flavored drugs.

Current federal drug laws do not provide sufficient disincentive to dealers who are manufacturing or distributing these candied and flavored drugs—hence, the need for the guidelines to be adjusted to provide a penalty specifically for those individuals who candy or flavor a drug to appeal to minors.

Additionally, the failure of the Department of Justice to enforce the Controlled Substances Act (CSA) in states with laws permitting the sale and manufacture of marijuana has meant a surge in kid-friendly, attractive looking “edibles” with THC as their main ingredient. These products are often packaged to look like well-known brands. While some companies (e.g. Hershey)¹ have threatened or introduced legal action against these illegal marijuana companies, too many of these products are still sold everyday in states such as Colorado. The Colorado Department of Revenue reported that in 2014, edibles made up about 45% of the overall legal marijuana market in Colorado, representing 5 million products sold (CO Dept. of Revenue, 2014).

These products have sent children to the emergency room at much higher rates than in the past, according to the Children’s Hospital of Colorado Emergency Department.

Current provisions offering sentencing enhancements to selling controlled drugs to minors **do not address the manufacturers** of these products. In the past, many of these manufacturers operated solely in the underground market. Now, however, these illegal companies often flaunt their products and proudly advertise in mainstream publications such as the *Denver Post*.

The Commission would do well to enhance penalties for manufacturers of controlled substances who create products that appeal to children, using things like cartoons, fluorescent writing, etc. It may be difficult to prove an *intent* to sell to minors, but the Commission could instead create a test to determine whether or not a product would appeal to children. For example, the Commission could consider: colors used, cartoon characters used, flavors offered, etc.

The provision could also take the form of a specific instruction to apply a vulnerable victim adjustment under subsection (b) of §3A1.1 (Hate Crime Motivation or Vulnerable Victim). For example, the Commission could provide a specific instruction at §2D1.1(d)(2) stating that, if a specific objective of the offense was to manufacture a controlled substance product for marketing to, or use by, minors, an adjustment under §3A1.1(b) would apply.

Of course, sentencing enhancements will mean little if the law is not enforced with swiftness and certainty. Currently, manufacturers in states like Colorado, California, Washington, and elsewhere are operating without any fear of the law, since authorities have taken a hands-off approach in instances of marijuana. If sentences do get enhanced, the Sentencing Commission would do well to widely advertise the new provisions and urge the Department of Justice to take action.

¹ Colo. Springs edibles firm settles suit over Hershey look – alike candy” *The Denver Post Business* (Oct. 16, 2014) http://www.denverpost.com/business/ci_26741590/colo-springs-edibles-firm-settles-suit-over-hershey

These instances are not confined to marijuana. There are numerous reports of the Drug Enforcement Administration confiscating strawberry and coconut-flavored cocaine², red, cherry-flavored methamphetamine (called “go-fast”), strawberry flavored methamphetamine (called “Strawberry Quick”).³ There has also been reports of a “gummy bear”, which coated with liquid “Molly”.⁴

The time has come to put an end to “edibles” disguised as candies and other child-friendly items. We strongly support the enhancements under consideration by the U.S. Sentencing Commission.

Sincerely,

A handwritten signature in black ink that reads "Kevin A. Sabet". The signature is written in a cursive, flowing style.

Kevin A. Sabet, Ph.D.
President, SAM, Inc. (Smart Approaches to Marijuana)

² “Fruit-Flavored Cocaine Joins the Trend in Flavored Drugs,” *Fox News* (June 27, 2007), <http://www.foxnews.com/story/2007/06/28/fruit-flavored-cocaine-joins-trend-in-flavored-drugs/>.

³ Kristina Davis, “Flavored meth aims to addict new users,” *San Diego Union-Tribune* (Apr. 7, 2007), http://www.utsandiego.com/uniontrib/20070407/news_1n7pinkmeth.html.

⁴ Personal communication, Lt. Chad Napier of the Metro Drug Unit from Charleston Police Department