



Prepared Testimony of Vikrant P. Reddy

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

Drugs: Community and Law Enforcement Views

Before the United States Sentencing Commission

March 13, 2014

I. Introduction

Thank you, Judge Saris and members of the Commission for the opportunity to appear before you today.

My name is Vikrant P. Reddy and I am a Senior Policy Analyst for the Texas Public Policy Foundation (TPPF) and for Right On Crime, TPPF’s national initiative to return conservative thinking on criminal justice to the “first principles” of limited government philosophy. Right On Crime works to fight crime while prioritizing victims and protecting taxpayers.

Since its launch in 2010, Right On Crime’s work has primarily been focused on reforming state, rather than federal, criminal justice policy. That does not mean, however, that Right On Crime is uninterested in federal reform. Justice Louis Brandeis famously depicted the states as ‘laboratories of democracy’ and suggested that states could imitate each other’s most successful policies. This idea could be extended one step further: the federal government could learn a great deal from the states.¹

Today, for example, the Commission is considering an important amendment to section 2D1.1 of the federal sentencing guidelines that is colloquially called “All Drugs Minus 2.”² The amendment would drop the severity level of all drug offenses in the Guidelines by two levels. State governments have enacted similar reductions to penalties for drug offenses (and other low-level, non-violent offenses) over the last decade, and they have realized significant cost savings with no negative impact on public safety. Crime rates, which have been dropping throughout the United States for two decades, continued

¹ *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (“It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”).

² See United States Sentencing Commission, [Proposed Amendments to the Sentencing Guidelines](#) 32-68 (Jan. 17, 2014).

to drop even after the states made the penalty adjustments.³ Why have crime rates been dropping even though states are making penalty adjustments? Because incarceration as a crime-control strategy suffers from diminishing returns. A certain level of incapacitation is necessary, but past a certain point, each additional dollar poured into incarceration is better spent on law enforcement and prevention.⁴

In my testimony today, I will briefly discuss what has happened in four states: South Dakota, Georgia, South Carolina, and Texas. I will discuss some of the penalties that these four states have adjusted—with special emphasis on penalties for drug offenses—and I will discuss the engagement of various stakeholders in these efforts.

The bottom line is that stakeholders from both parties and all parts of government have been enthusiastic about the success of state-level criminal justice reforms that improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and strengthen neighborhoods. I think the Commission will find that Americans will welcome similar penalty reductions at the federal level. Indeed, many activists, policy-makers, judges, victims' groups, and informed citizens not only welcome the "All Drugs Minus 2" amendment, they feel it is long overdue. Some will likely say that the amendment is only a first step, and it ought to be the beginning—not the end—of a rethinking of federal sentencing policies.

II. The "All Drugs Minus Two" Amendment Will Simplify Federal Sentencing Law, Save Money, and Could Dramatically Improve Public Safety

Since 1980, the population of the U.S. has increased by 32 percent, but the population of the federal prison system has grown by over 700 percent.⁵ The population in the federal prison system now exceeds 215,000.⁶ State prison populations have seen a notable decline in recent years, but the federal prison population continues to grow.⁷ In 2012, the total population of incarcerated persons in the United States had decreased for the fifth consecutive year, but according to the Bureau of Justice Statistics, the

³ See Pew Charitable Trusts, [States Cut Both Crime and Imprisonment](#) (Dec. 2013).

⁴ Anne Morrison Piehl & Bert Useem, "Prisons," in *Crime and Public Policy* 542 (eds. James Q. Wilson and Joan Petersilia) (Oxford University Press 2011) ("[Incarceration produces] a percent reduction in crime that gets smaller with ever-larger prison populations.").

⁵ The Sentencing Project, "[The Expanding Federal Prison Population](#)," March 2011, p. 1 (internal citations omitted). See also "[Federal Bureau of Prisons FY 2013 Budget Request](#)," before the House Subcommittee on Commerce, Justice, Science, and Related Agencies (March 6, 2012) (statement of Charles E. Samuels, Jr., Director of the Federal Bureau of Prisons), p.3 (noting "substantial ongoing challenges" posed by overcrowding).

⁶ United States Department of Justice, "[Quick Facts about the Bureau of Prisons](#)," (Bureau of Prisons, June 28, 2012). As of Feb. 27, 2014, the Bureau of Prisons was supervising a total of 215,482 individuals in all public facilities, private facilities, and community correctional management field offices. Federal Bureau of Prisons [Weekly Population Report](#), last accessed Feb. 28, 2014.

⁷ Paul Guerino, Paige Harrison, & William J. Sabol, [Prisoners in 2010](#), U.S. Department of Justice, Bureau of Justice Statistics (December 2011), Table 1 (from 2008 to 2010, the Federal prison population increased by 4.2%, while state prison populations decreased by 0.4%).

fall was entirely due to state declines.⁸ During that same time period, the number of incarcerated persons in the federal system actually increased by one percent.⁹

The expansion of federal prosecution into areas traditionally governed by the police function of the states—the “overfederalization” of crime—has played a significant role in the increase of the federal prison population.¹⁰ Federal criminal justice policies increasingly ignore the admonition in *The Federalist Papers* that “[t]here is one transcendent advantage belonging to the province of the State governments... the ordinary administration of criminal and civil justice.” Justice Antonin Scalia also observed, in his testimony before the U.S. Senate Judiciary Committee in 2011, that “it was a great mistake to put routine drug offenses into the federal courts.”¹¹

In 1980, 4,749 drug offenders accounted for 25% of the federal prison population, but in 2009, a total of 95,205 drug offenders accounted for 51% of the federal prison population.¹² For some in this category, such as major drug kingpins, justice requires lengthy sentences. Major drug kingpins, however, only represent a small portion of the prison population. As this Commission explained in a 2007 report to Congress, many people incarcerated in federal prisons are drug offenders who historically would have been dealt with in state criminal justice systems.¹³

Inevitably, the federal prison budget grew as the federal prison population grew. The BOP budget increased by an average of \$197 million per year from Fiscal Year (FY) 1980 to FY 2010, a total increase of approximately 1,700 percent.¹⁴ The current BOP budget is 25 percent of the entire Department of Justice (DOJ) budget, and a 2012 Urban Institute study concluded that “if present trends continue, the

⁸ Lauren E. Glaze & Erinn J. Herberman, [Correctional Populations in the United States, 2012](#), U.S. Department of Justice, Bureau of Justice Statistics (December 2013), 3 (“The state prison population (down 1.8% or 23,200 prisoners) decreased during 2012, accounting for the entire decline in the U.S. custody prison population...”).

⁹ *Id.* (“The increase in the federal prison population (up 1.0% or 2,100) slightly offset the total decline in the U.S. prison population.”)

¹⁰ Alexander Hamilton, “[The Federalist No. 17](#)” (December 5, 1787); see also Vikrant P. Reddy, “[10th Amendment applies to criminal justice, too](#),” *The National Law Journal* (February 15, 2012).

¹¹ Testimony of Antonin Scalia, [Hearing on Considering the Role of Judges Under the Constitution of the United States Before the Senate Judiciary Committee](#), 111th Cong. 8 (October 5, 2011).

¹² [The Expanding Federal Prison Population 2](#) (internal citations omitted).

¹³ “[Report to Congress: Cocaine and Federal Sentencing Policy](#),” United States Sentencing Commission (May 2007), 85. (“Among federal powder cocaine offenders the largest proportion are couriers and mules, consistent with the need for a large number of low-level, unskilled laborers required to transport the drug into the United States. Among federal crack cocaine offenders, the largest proportion of offenders also are classified in a low-level function – that of street-level dealer...”); see also Testimony of Bret Tolman, [Hearing on Rising Prison Costs: Restricting Budgets and Crime Prevention Options Before the Senate Judiciary Committee](#) (August 1, 2012), 3-4 (“In the drug arena, DOJ is expected to use the hammer of heavy mandatory minimum sentences to dismantle drug trafficking—but the reality is that most prosecutions, while resulting in significant prison sentences, are only netting insignificant ‘mules’ or small-time traffickers rather than those of any importance in a given drug organization.”).

¹⁴ [The Federal Prison Population Buildup](#), 11; William T. Robinson & Janet Levine, “[Time is right for criminal justice reform](#),” *The Hill*, October 25, 2011.

share of the DOJ budget consumed by BOP will [approach] 30 percent in 2020."¹⁵ The FY 2013 budget request for BOP, \$6.9 billion, was 4.2 percent higher than the budget enacted in FY 2012.¹⁶ The increasing cost of prisons is not only a fiscal concern. It has public safety consequences: the swelling BOP budget crowds out other important DOJ functions, such as crime prevention and investigation.¹⁷

Expansions of the federal prison system have been proposed to deal with these problems.¹⁸ Such proposals are ultimately superficial. They do not solve the fundamental growth problem. Today, however, the Commission is considering a change that would address the growth problem: the "All Drugs Minus Two" amendment to section 2D1.1 of the U.S. Sentencing Guidelines.

Federal offenses are assigned levels to indicate their severity, from one to 43. Judges determine the level of an offense and that level corresponds to an advisory sentencing range. This Commission has proposed an amendment to lower all drug offenses by two levels. Thus, an offense at a base level of 20 (33-41 months for a first-time offender), would now be associated with a base level of 18 (27-33 months for a first-time offender).

It is important to note, first of all, that this amendment would only change the base level of the offense. Sentencing enhancements (e.g., possession of a firearm when committing an offense) could still apply and add months—or even years—to an offender's sentencing range. In addition, the U.S. Supreme Court has ruled that the guidelines are merely advisory, so federal district judges will still maintain the discretion to depart from the guidelines (either upward or downward) if they believe it is necessary.¹⁹

But one of the main reasons to make this change would be to bring simplicity to federal sentencing law and procedure. As Families Against Mandatory Minimums (FAMM) has observed, the U.S. Sentencing Guidelines do not necessarily match the federal mandatory minimum sentences.²⁰ For example, possession of 280 grams of cocaine carries a mandatory minimum of 120 months, but under the Guidelines, the sentencing range is 121 - 151 months.²¹ At the very least, the low end of the sentencing range ought to drop to 120 months so that sentencing judges are not faced with the task of reconciling

¹⁵ Nancy La Vigne & Julie Samuels, [The Growth and Increasing Cost of the Federal Prison System: Drivers and Potential Solutions](#), Urban Institute Justice Policy Center (November 2012), 2.

¹⁶ *Ibid.* It is worth noting that not only is a larger prison population leading to higher incarceration costs, but the per capita cost of incarceration itself has been rising. [The Federal Prison Population Buildup](#), 15-16. "Annual costs per inmate are \$21,006 for minimum security, \$25,378 for low security, \$26,247 for medium security, and \$33,930 for high security." Lavigne & Samuels, [Growth and Increasing Cost](#), 2. The average cost per federal prisoner is \$28,284 per year (\$77.49/day). "[Annual Determination of Average Cost of Incarceration](#)," Bureau of Prisons, 76 Fed. Reg. 57081 (September 15, 2011).

¹⁷ "[Annual Letter to the United States Sentencing Commission](#)," Office of the Assistant Attorney General (Jul. 23, 2012), p.4.

¹⁸ United States Department of Justice, "[FY 2013 Budget and Performance Summary](#)," (2012), 8. The President's FY 2013 budget request of \$8.6 billion for federal prisons and detention is a 4.5 percent increase over the enacted budget of FY 2012, despite a 2.2 percent decrease in the DOJ discretionary budget. This includes plans to open two new prisons, and contract for an additional 1000 beds. *Ibid.*

¹⁹ See *U.S. v. Booker*, 543 U.S. 220, 228 (2005).

²⁰ Families Against Mandatory Minimums, [Reforming the Guidelines for Drug Offenses: All Drugs Minus Two](#), last accessed February 28, 2014.

²¹ *Id.*

conflicting mandatory minimums and sentencing ranges. This is a matter of uniformity and consistency in law.

This may seem to be a modest change, but it is expected that the amendment will save about 14,000 bed years and within five years, the federal prison population would be reduced by about 6,550 offenders. The Department of Justice would thus realize exceptional savings that could potentially be reinvested into better law enforcement and recidivism prevention programs, like drug treatment and reentry opportunities for federal offenders.

There is no evidence that this reduction in penalties will have a negative impact on public safety. In fact, the evidence that is available—the previous round of drug-related Guidelines reforms in 2010—suggests that there will be no statistically significant impact. For a substantial number of offenders, there is little or no evidence that keeping them incarcerated longer prevents additional crime.²² Several studies, looking at different populations and using varied methodologies, have attempted to find a relationship between the length of prison terms and recidivism but have failed to find a consistent impact, either positive or negative.²³

A word must also be said about the importance of reinvesting these savings into strategies to improve public safety, including treatment and reentry. In FY 2010, about one in seven BOP admissions were supervision violators.²⁴ In 2012, a report on recidivism among offenders on federal community supervision that was prepared for the Bureau of Justice Statistics and the Office of Probation and Pretrial Services concluded that substance abuse, mental health issues, and difficulty in obtaining employment are all risk factors for recidivism.²⁵ Changes to the sentencing guidelines must be accompanied by an allocation of DOJ's savings towards addressing these risk factors.

²² An analysis by the Pew Charitable Trusts conducted by external researchers found that a significant proportion of non-violent offenders who were released in 2004 from three states – Florida, Maryland and Michigan – could have served shorter prison terms without impacting public safety. Pew Charitable Trusts, [*Time Served: The High Cost, Low Return of Longer Prison Terms*](#), June 2012.

²³ Paul Gendreau, Claire Goggin, and Francis T. Cullen, *The Effects of Prison Sentences on Recidivism* (1999). —Thomas Orsagh and Jong-Rong Chen, "The Effect of Time Served on Recidivism: An Interdisciplinary Theory," *Journal of Quantitative Criminology* 4(2) (1988): 155-171; Washington State Institute for Public Policy, *Sentences for Adult Felons in Washington: Options to Address Prison Overcrowding* (Olympia, WA: 2004); Ilyana Kuziemko, *Going Off Parole: How the Elimination of Discretionary Prison Release Affects the Social Cost of Crime*, National Bureau of Economic Research Working Paper (2007), <http://www.nber.org/papers/w13380>; National Council of Crime and Delinquency, *Accelerated Release: A Literature Review* (Oakland, CA: January 2008); G. Matthew Snodgrass, Arjan A. J. Blokland, Amelia Haviland, Paul Nieuwebeerta, Daniel S. Nagin, "Does the Time Cause the Crime? An Examination of the Relationship Between Time Served and Reoffending in the Netherlands," *Criminology* 49 (2011):1149–1194; Thomas A. Loughran, Edward P. Mulvey, Carol A. Schubert, Jeffrey Fagan, Alex R. Piquero, and Sandra H. Losoya, "Estimating a Dose-Response Relationship Between Length of Stay and Future Recidivism in Serious Juvenile Offenders," *Criminology* 47 (2009): 699-740.

²⁴ La Vinge & Samuels, *Growth and Increasing Cost*, 5.

²⁵ William Rhodes, Christina Dyous, Ryan Kling, Dana Hunt, and Jeremy Luallen, [*Recidivism of Offenders on Federal Community Supervision*](#), Abt Associates (January 2013).

The amendment before you today will produce savings for the federal government. To the extent that Congress can direct a portion of these savings to fundamentally improving community supervision of inmates, it will produce an extraordinary opportunity to enhance long-term public safety in this country.

III. **The Cultural Shift on Penalty Adjustments**

Over the last ten years, many states have made adjustments to sentence lengths that have served to update and modernize their criminal codes. In doing so, they have seen no diminution of public safety. The changes have come in places one might find surprising—states like Arizona, Georgia, Ohio, Pennsylvania, South Carolina, and Texas. These are, plainly, conservative states. In virtually all of these states, both the legislature and governorship are controlled by conservative Republicans. In none of those states could the political culture be described as “soft on crime.” All of these states have built political consensus around adjusting criminal sentences to better reflect current best-practices about how criminals must be held accountable.

I will briefly address the experiences four states have had with adjusting criminal sentences: South Dakota in 2013, Georgia in 2011, South Carolina in 2010, and Texas in 2007.

A. South Dakota²⁶

In 2013, South Dakota passed SB 70, a major overhaul of its sentencing and corrections system. An 18-member work group of stakeholders assembled in South Dakota determined that six of the eight most frequent offenses for which inmates were serving time in state prison were non-violent offenses. The group further determined that the most frequent offense was simple drug possession. South Dakota decided to reduce penalties for several drug offenses in order to free up funds for improved treatment and rehabilitation options. Among them:

- The penalty for drug possession—as distinct from distribution—was reduced from a Class 4 felony, which carries a maximum penalty of ten years in prison, to a Class 5 felony, which carries a maximum penalty of five years in prison.
- Theft of \$2,500-\$5,000 was decreased from a Class 4 felony to a Class 5; theft of \$1,000-\$2,500 was decreased to a Class 6 felony.
- The state established presumptive probation for all Class 5 and Class 6 felonies.

South Dakota’s criminal justice reform bill was endorsed by several of the state’s most prominent groups dedicated to law enforcement and victim’s rights: the Police Chiefs’ Association, the Sheriffs’ Association, and the Network Against Family Violence and Sexual Assault. SB 70 passed with overwhelming support: 31-2 in the Senate and 63-7 in the House of Representatives. It is estimated that the legislation will save South Dakota \$207 million in prison construction and operating expenses over the next ten years.

²⁶ Material on South Dakota’s 2013 reform is taken from Pew Public Safety Performance Project, [South Dakota’s 2013 Criminal Justice Initiative](#) (June 2013).

B. Georgia²⁷

In 2012, Georgia underwent a major revision of its sentencing and corrections system. Many penalties were adjusted, including the penalties for several drug crimes. State leaders were careful to obtain "buy-in" from every component of the government, from criminal justice stakeholders, and from prominent opinion leaders, like the Georgia Public Policy Foundation, a limited-government think-tank in Atlanta.

The final bill featured the following prominent penalty adjustments:

- Georgia created degrees of seriousness—and thus degrees of penalties—for simple drug possession, based on the weight of drugs. Amounts below one gram may now be charged as simple felony possession, so as to better identify and treat offenders whose conduct is likely due to addiction.
- The criminal code's recidivist statute was restricted; it now does not apply to drug possession offenses.
- Georgia created new degrees of forgery based on the seriousness of the offense.
- Georgia raised its offense thresholds for theft. The felony theft threshold was raised from \$500 (where it was set in 1982) to \$1,500; the felony shoplifting threshold was increased from \$300 to \$500; and the penalty for the most serious type of theft—theft above \$25,000—was increased.

Georgia began the reform process by establishing the Special Council on Criminal Justice Reform for Georgians. Four components of Georgia's government—the Governor, the Senate, the House, and the Judiciary—selected three representatives to the council. (The Governor selected an additional member to serve as the council's chair.) Notably, the District Attorney of Douglas County—one of the most prominent "tough on crime" voices in the state—was appointed to the council. Georgia did not want to present the prosecutorial community with a bill which they had to either accept or reject; it wanted the views of the prosecutorial community to be heard at every stage of the process.

The Georgia reform bill, HB 1176, was passed unanimously in both chambers of the state legislature: 162-0 in the House of Representatives and 51-0 in the Senate. A poll commissioned by the Pew Charitable Trusts revealed that at least 79% of Democrats, Republicans, and Independents all expressed support for the changes.²⁸ The legislation is expected to save the state \$264 million in averted prison costs.

C. South Carolina²⁹

In 2010, South Carolina undertook a major overhaul of its criminal statutes. Several penalties were adjusted, among them:

²⁷ Material on Georgia's 2012 reform is taken from Pew Public Safety Performance Project, [Georgia Public Safety Reform: Legislation to Reduce Recidivism and Cut Corrections Costs](#).

²⁸ Pew Public Safety Performance Project, [Public Attitudes on Crime and Punishment in Georgia](#) (February 2012), 1.

²⁹ Material on South Carolina's 2010 reform is taken from Pew Public Safety Performance Project, [South Carolina's Public Safety Reform: Legislation Enacts Research-based Strategies to Cut Prison Growth and Costs](#), 6.

- South Carolina provided for persons convicted for a first or second drug offense, other than trafficking offenses, to be eligible for probation or a suspended sentence, parole, work release, good conduct and other credits. Additionally, persons convicted of a third or subsequent drug offense, other than trafficking offenses, were made eligible for probation, suspension, parole and credits in limited circumstances.
- The property value threshold for felony theft was increased from \$1,000 to \$2,000, thereby reclassifying all property crimes below \$2,000 as misdemeanors.
- The maximum penalty for burglary in the second-degree (which is a non-violent penalty, such as burglary of a commercial building in the daytime) was reduced from 15 years to 10 years, and the offenders were made eligible for parole.
- Entire categories of assault offenses—such as “assault against a sports official” or “assault against an EMS agent”—were removed altogether. These “boutique crimes” were replaced by a single assault statute with graduated sanctions.

South Carolina’s reform bill passed unanimously in the Senate and 97-4 in the House of Representatives. South Carolina’s legislation was a balanced bill that included penalty enhancements for a few exceptionally serious crimes. For example, penalties were increased for habitual motor vehicle offenders who drive with a suspended license and commit a crime that results in death. Also, twenty-four crimes were added to the “violent crime” list that had not been classified as “violent” offenses even though many resulted in a victim’s death.

Since the enactment of the legislation in 2010, the state prison population has decreased by 8.2 percent and violent prisoners make up a larger proportion of the state’s inmates. At the same time, crime has dropped by 14 percent over the last five years.

D. Texas³⁰

Texas has a reputation as one of the most “tough on crime” states in America. Texas is tough on crime, but it is also pragmatic. In 2007, Texas altered several significant components of its sentencing and corrections system. The primary achievement of the Texas reforms was the expansion of the state’s community supervision capacity via expanded drug courts and parole/probation monitoring. The Texas reforms, however, also contained a few important sentencing adjustments.

- Texas instituted a “cite and summons” procedure for simple marijuana possession. Most defendants charged with marijuana possession were sentenced to probation, but waited in jail for trial dates. Taxpayers were, in effect, paying dearly to jail individuals most likely destined for probation. The state’s “cite and summons” reform now permits peace officers to issue a court summons for marijuana possession, rather than arrest the offender. Offenders who ignore the summons are still subject to arrest.

³⁰ Material on Texas’s 2007 reform is taken from The Council on State Governments Justice Center, *Justice Reinvestment State Brief: Texas* (2007).

- Texas capped probation terms for both drug and property offenders at five years, rather than ten years, so that resources could be concentrated in the period immediately after release, which is when research has demonstrated that the recidivism risk is the highest.

The Texas criminal justice reforms of 2007 were led by a Democratic state senator, John Whitmire, and a Republican House member, Jerry Madden. The legislation was guided through a legislature that was entirely led by conservative Republicans. Ultimately, a conservative governor, Rick Perry, signed the relevant bills and budgets. The Legislative Budget Board advised that the state would need to build 17,000 new prison beds at a cost of \$2 billion to accommodate the anticipated growth over the next six years. Legislators, however, adjusted several penalties and then allocated a much smaller figure—slightly more than \$240 million—to improving community supervision in the state. Texas is now enjoying its lowest crime rate since 1968 and has seen a twenty-five percent drop in recidivism. Moreover, the state has shuttered three prisons in the last three years.

Last fall, the Texas Public Policy Foundation commissioned a poll of Texans' attitudes on criminal justice in the wake of the 2007 reforms.³¹ In virtually every cross-section of poll data, approval of policies to adjust sentence lengths and focus more on treatment and rehabilitation were supported by over eighty percent of respondents. The greatest support for reform was identified in two political groups: liberals and self-identified "Tea Party" conservatives.

IV. Conclusion

The "All Drugs Minus 2" Amendment would be a welcome modification to the federal sentencing guidelines. Lord Radcliffe, the British jurist, wrote that "every system of jurisprudence needs...a constant preoccupation with the task of relating its rules and principles to the fundamental moral assumptions of the society to which it belongs."³² These assumptions include what level of punishment it is just and sensible to ask a society to finance.³³ This amendment is directed at those precise concerns. It will bring greater simplicity to federal law and procedure and it will save valuable taxpayer dollars. Most importantly, if a portion of the money saved from this change is reinvested into drug treatment and reentry programs for federal offenders, the United States will see great improvements in public safety.

The success of state-level corrections reforms indicates that Americans will respond enthusiastically to modifications in federal drug crime penalties if they feel that cost savings are being directed towards reducing the demand for drugs in this country. Lengthy bouts of incarceration are simply not proving to be effective at fighting crime. Instead, a greater emphasis must be placed on treatment, rehabilitation, and making sure that offenders are able to lead productive lives after they have paid their debt to society.

³¹ Texas Public Policy Foundation, "[New Poll Shows Strong Support for Criminal Justice Reforms](#)" (Nov. 2013).

³² Sanford H. Kadish, *Codifiers of the Criminal Law: Wechsler's Predecessors*, 78 COLUM. L. REV. 1098, 1139 (1978).

³³ Vikrant P. Reddy, *Making Texas Sentences Fit the Crime: Forming a Commission to Rewrite the Penal Code* 1 (Texas Public Policy Foundation: April 2013) (citing Cesare Beccaria, *On Crimes and Punishments* 19 (1995) (ed. Richard Bellamy)).

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In each state that I identified today, penalty adjustments were coupled with expansions of drug and mental health treatment, rehabilitation, and community supervision programs. That is what Americans want—not just modified drug sentences, but action to replace long drug sentences with more accountability for drug offenders. Accountability does not mean merely sitting in a cell. It means getting treatment, paying restitution to victims, and holding steady employment upon release from prison.

I realize that the United States Sentencing Commission is not empowered to ensure that these improvements are made to federal drug treatment and reentry. I do hope, however, that the Commission will be a strong champion for these changes when Congress considers today's important amendment. The amendment is an excellent first step, but it is only the first step.