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Thank you for inviting The Lindesmith Center - Drug Policy Foundation to participate in today's hearing on the issue of appropriate sentencing guidelines for MDMA. The Lindesmith Center - Drug Policy Foundation believes increasing MDMA penalties is unwarranted given the standards that the Commission uses when designing new sentencing schemes, such as incorporating the proper purposes of sentencing and providing certainty and fairness. Steeper penalties will do nothing to provide non-violent drug offenders with the rehabilitation necessary to weave them back into the social fabric and such sentences only further sever their ties to their communities and families. Since most MDMA offenders are non-violent, incapacitation of offenders has no impact on violent crime. Additionally, increased penalties will be neither a deterrent nor a just punishment. Despite tough drug laws, drugs have been getting cheaper and purer over the last couple of decades. In addition, steeper penalties will be out of line with the medical community's views on MDMA. Tougher MDMA laws will also not bring more certainty and fairness to the criminal justice system. History has shown that the brunt of harsh drug laws falls heavily on low-level drug offenders, especially the poor and people of color, while higher-level offenders, whites, and people of means bargain their way out of stiff penalties.

The Commission should be careful to base its final decision regarding MDMA on science, not political pressure. The Comprehensive Crime Control Act of 1984 charges the U.S. Sentencing Commission with ensuring fairness in the criminal justice system, guaranteeing that punishments fit the crime, making sure that various sentencing structures don't create disparities within the criminal justice system, and guiding Congress in the establishment of rational sentencing policies. The Lindesmith Center - Drug Policy Foundation believes that the Commission will find that, upon examination of all the evidence, increases in MDMA penalties are unnecessary and will only undermine community efforts to reduce various harms associated with MDMA abuse.

In February The Lindesmith Center - Drug Policy Foundation, in partnership with the San Francisco Medical Society, held a national conference to examine and discuss the current medical and sociological research regarding MDMA. Entitled *The State of Ecstasy: the Medicine, Science and Culture of MDMA*, the conference attracted over 300 doctors, sociologists, activists, and policy makers, while another 1,300 viewed the conference via our web site. Covering such issues as the current scientific research on the benefits and dangers associated with MDMA, the sociological and cultural impact of the drug on America, the future direction of MDMA medical research, and evolving policy issues, the conference was the most comprehensive conference on MDMA in the United States. Speakers included Marsha Rosenbaum, director of our West Coast office, former NIDA-funded researcher for 18 years, and the lead researcher on the first federally funded sociological study on MDMA; and some of our country's leading MDMA scientific researchers including, FDA Pharmacologist, Dr. Katherine Bonson; UCLA director of Child and Adolescent Psychiatry, Dr. Charles Grob; and NIDA researcher/ John Hopkins neurobiologist, Dr. George Ricaurte. As a result of the conference, The Lindesmith Center - Drug Policy Foundation is in a unique position to report to the Commission on the latest medical and sociological research regarding MDMA.

The Lindesmith Center - Drug Policy Foundation shares the desire of Congress and the Sentencing Commission of reducing the demand for MDMA. Severe sentencing increases, however, have not proven effective in controlling the use of MDMA. Indeed as the government has been waging a war on MDMA use since the mid-80s, MDMA has gone from a relatively unknown drug with limited use to a widely used drug that is available across the country today. Harsh new sentences will not change this record of failure. Additionally, penalty increases are likely to have serious unintended consequences including: creating a more competitive MDMA black market that will spawn more prohibition-related violence; subjecting more non-violent Americans to long prison sentences, further expanding our bulging two-million inmates prison system; and increasing the number of adulterated MDMA pills sold to unsuspecting consumers, further endangering the lives of Americans who use MDMA.

One major consequence of steeper MDMA sentences that needs to be considered before making any decision is the risk of more counterfeit substances being sold as MDMA (so sellers can meet the demand for MDMA without risking the harsh MDMA sentences). Many, if not all, of the problems attributed to MDMA stem not from MDMA itself, but from the use of counterfeit drugs sold to unsuspecting buyers as MDMA.

Just one example is a rave of more than 5,000 people in Oakland, California last fall, where nine people were sent to the hospital by ambulance for complications arising after they took what they believed to be MDMA. Tests after the fact determined that eight of the nine users had taken pills that weren't even MDMA. DanceSafe, a national, youth-oriented harm-reduction organization, has found that 40% of MDMA pills sent to them to be tested for composition are substances other than MDMA. As many as 20% of the MDMA pills they test at raves contain drugs other than just MDMA.

Common adulterants include caffeine, cocaine, speed and various over-the-counter drugs. Other drugs, such as PCP and ketamine, are commonly and fraudulently sold to users as MDMA. One of the most harmful adulterants (and what eight of the nine Oakland ravers actually took) is DXM (dextromethorphan), a cheap cough suppressant that can produce hallucinations when taken in a concentrated form. DXM inhibits sweating and when coupled with dehydrating activity, such as dancing, can cause heatstroke. Another dangerous drug often fraudulently sold as MDMA is PMA (paramethoxyamphetamine), an illegal drug that is vastly more potent and hypothermic than MDMA. Raising the penalties for MDMA will undoubtedly lead to more counterfeit substances being sold as MDMA, which would even further endanger the lives of our young people

The proposed sentencing increases are also unwarranted given both the nature of MDMA and the current scientific evidence regarding its use and problems associated with it. Despite ample evidence supporting the therapeutic use of MDMA, the evidence regarding possible negative consequences of its use is mixed. Before MDMA was banned in 1987, therapists and psychiatrists around the country used MDMA-assisted psychotherapy to help thousands of patients suffering from terminal illness, trauma, marital difficulties, drug addiction, phobias, and other disorders. Medical professionals reported lasting improvements in patients' self-esteem, their ability to communicate with loved ones, their capacity for reaching empathic rapport, and their capacity for trust and intimacy. A recent study on the therapeutic benefits of MDMA found that half of psychiatrists with personal past histories involving MDMA reported long-term improvement in social and interpersonal functioning. 85% had increased ability to be open with others, 65% had decreased fear, and 50% had increased awareness of emotions and reduced aggression.

A Swiss study of patients being treated with MDMA from 1988 to 1993 found 90.9% had

improved clinical status as a result of MDMA-assisted treatment, while only 2.5% appeared to have clinically “deteriorated.” The Swiss-MDMA patients also were shown to have significantly reduced their use of nicotine, alcohol, and marijuana in the years following their MDMA treatment, and significant improvements were found in their self-acceptance, autonomy, and overall quality of life. In Spain, medical professionals are conducting a study on the use of MDMA to treat rape victims with Post-Traumatic Stress Disorders. In the U.S., the Harbor-UCLA Medical Center is conducting research on the use of MDMA to treat patients whose end-stage cancer produces depression, anxiety, alienation and pain that cannot be eased with conventional therapies.

Despite legal barriers, thousands of Americans use MDMA for therapeutic treatment, personal or spiritual growth, and relief of emotional pain. Just one example is the case of Sue and Shane Stevens who used MDMA illegally in 1997 to come to terms with Shane’s debilitating cancer and ease the emotional suffering of Shane’s pending death. Such self-administered therapeutic use of MDMA is common. The overwhelming scientific evidence in support of the use of MDMA in treating certain patients is why doctors and therapists vigorously fought re-scheduling MDMA as a Schedule I drug in 1987, and why a DEA administrative judge studying the merits concluded that MDMA should be scheduled as a Schedule III instead. Unfortunately, DEA officials (and later Congress) chose to overrule the medical community and the DEA’s own administrative judge by scheduling MDMA as a Schedule I drug, greatly curtailing legal medical use and research.

While a large body of scientific evidence shows that MDMA offers certain users important therapeutic benefits, scientific evidence on the drug’s negative effects is mixed at best. Although a body of research, primarily conducted by Dr. George Ricaurte with funding from the U.S. government, suggests that MDMA may pose long-term risks to

users, the evidence is inconclusive, and many medical professionals disagree with Ricaurte's conclusions. Heavily cited research on MDMA's possible effects on memory and cognitive skills suffer from serious methodological shortcomings, including failing to control for polydrug use, level of drug use, and other variables, as well as failing to construct an ample control group. Medical professionals still do not understand the exact impact of MDMA on aspects of serotonin neuronal architecture, such as the axonal projections. While scientists are in agreement that there is no evidence that MDMA's effects on axonal projections causes any functional changes, there is disagreement as to what the long-term effects of MDMA could be in this area. Other harms associated with MDMA use, such as temporary changes in body temperatures, are confounded by MDMA prohibition which floods the MDMA market with adulterated MDMA and also makes the establishment of harm reduction programs more difficult.

None of this is to suggest that there are no risks associated with the use of MDMA or that there are no possible long-term negative effects to its use, only that there is still much that we don't know about MDMA. Not only would increasing MDMA-related penalties further jeopardize medical research and its therapeutic use, it also risks giving MDMA offenders harsh sentences out of line with the actual dangers associated with the drug.

The Commission should also be concerned about the effects increased MDMA penalties could have on our criminal justice system. Information about non-violent offenders, the problems associated with mandatory minimums and harsh sentences, and the potential for racial and other disparities are just a few of the concerns that should be addressed prior to making any final decision. Since 1984, Congress has enacted a series of mandatory minimum sentencing penalties and other harsh sentencing structures designed to stem the trade in illegal drugs. Nonetheless, drugs are cheaper, purer, and easier to get than ever, and the illegal drug market is the strongest it has ever been. Incarceration, however, has

Since the government targets the “rave” culture in its fight against MDMA (even though most MDMA use occurs outside of raves), harsher MDMA penalties will result in more low-level, non-violent youths receiving very long prison sentences. The effects of harsher MDMA penalties on young Americans will be similar to the effects of harsh crack-cocaine penalties which, because law-enforcement officers typically target visible inner city youths for arrests, results in a disproportionate number of young, nonviolent black men being incarcerated for extraordinary long prison terms. Additionally, tough new MDMA penalties will bring punitive federal drug laws to communities currently unaccustomed to having the lives of their sons and daughters ruined by long prison terms for non-violent offenses.

One example of what the future of harsh MDMA policies could hold for communities unaccustomed to the injustices of harsh sentencing schemes is the case of Kenneth Gregorio. Kenneth was a 23 year-old New Jersey college student arrested late last year under New Jersey’s new MDMA law, which makes penalties for possessing, selling or manufacturing MDMA comparable to cocaine and heroin. This young college student hanged himself in jail after learning that he faced up to twenty years in prison for his first time distribution offense. His family and community were stunned by both his death and the lengthy sentence he faced.

The Commission should also evaluate the potential impact of new sentencing increases on the illegal MDMA trade. A more fiercely competitive MDMA black market, more risk-prone MDMA dealers, and greater levels of violence associated with the MDMA trade are likely consequences of harsher MDMA penalties. While the MDMA black market has traditionally been composed of relatively peaceful actors, tough federal penalties could drive these actors out, leaving the market to violent criminals. The consequences to those that come in contact with the MDMA market, as well as society in

general, should be obvious.

MDMA sentencing increases have not and will not prove effective in controlling the use of MDMA. Steeper penalties will not only be ineffective, they are unwarranted given the nature of MDMA and what the medical community believes to be the benefits and risks associated with the drug. New increases also produce unintended consequences that will multiply the dangers associated with the use of MDMA and its trade.

In contrast, community leaders are trying more effective approaches to reducing the harms associated with MDMA use. Peer educators are working to educate their peers on the dangers of MDMA, prolonged dancing while on MDMA, and the dangers of polydrug use; and harm-reduction organizations are providing valuable education materials and testing services that protect users from adulterated MDMA pills or other drugs, such as LSD or cocaine, masquerading as MDMA. Unfortunately, new federal penalties will scare many Americans away from seeking help from educators and health care officials. The new penalties will also make harm reduction programs even more difficult. For this reason, and many others, the proposed sentencing increases will be a step backwards in the fight to deal with the harms associated with MDMA abuse.

The Lindesmith Center - Drug Policy Foundation recommends that the Commission take into account the fact that MDMA is sold in a capsule/pill form, increasing the weight of the MDMA. Thus, potential increases in MDMA penalties may overestimate the actual MDMA dose amount that an offender will be punished for. Any increase in MDMA-related penalties should take the extra weight of the capsule into account and the penalties should be discounted accordingly.

The Lindesmith Center - Drug Policy Foundation believes that the prudent course of

action is to not increase MDMA penalties and not risk subjecting more non-violent drug offenders, a number of whom are likely to be quite young, to long prison sentences that will be out of line with the known medical dangers associated with MDMA use. In addition, long experience with drug addiction has shown that there is little or no deterrent value to increasing sentences. It is our strong belief that if the government wants to solve the problem of MDMA abuse facing our nation, the solution should be rooted in science and in the interest of public health, rather than harsh, ineffective sentencing schemes.

The Lindesmith Center - Drug Policy Foundation is the leading independent drug policy institute in the United States. The guiding principle of the center is harm reduction, an alternative approach to drug policy and treatment that focuses on minimizing the adverse effects of both drug use and drug prohibition. Lindesmith Center - DPF and its affiliated organizations promote drug policies based on common sense, science, public health and human rights. These include redirecting government drug control resources from criminal justice and interdiction to public health and education; supporting public health measures, notably syringe exchange and other harm reduction programs, to reduce HIV/AIDS, hepatitis and other infectious diseases; making methadone maintenance and other effective drug treatment more accessible and available; repealing mandatory minimum sentences for non-violent drug offenses; and ending racially discriminatory drug policies and enforcement measures.