

Statement of Diana E. Murphy
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Before the Senate Caucus on International Narcotics Control

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Chairman Grassley, members of the Caucus, I am Diana Murphy, Chair of the United States Sentencing Commission (the "Commission"). I appreciate the opportunity to testify today about proposed changes to the federal sentencing guidelines for ecstasy trafficking in response to recently enacted legislation which was cosponsored by several members of the Caucus.

As you know, the Ecstasy Anti-Proliferation Act ("the Act") was enacted on October 17, 2000, and directs the Commission to amend the federal sentencing guidelines to provide for increased penalties for ecstasy trafficking in order to reflect the seriousness of these offenses and the need to deter them. The Act also requires the Commission to consider a number of other factors, such as the need for aggressive law enforcement, the dangers associated with the drug, the rapid growing incidence of ecstasy abuse, and the youth of the users.

At the outset, let me state that the Commission wholeheartedly shares Congress's concern about the serious threat posed by the illegal importation, trafficking, and use of ecstasy and is equally disturbed by the increasing availability of the drug and increasing abuse, especially by our youth. For this reason, in exercising its emergency amendment authority granted by Congress in the Act, the Commission has made responding to the directives contained in the Ecstasy Anti-Proliferation Act a highest priority for the agency. To complete our work as quickly as possible, we shifted resources from other important policy development areas, such as implementing other congressional directives regarding stalking and sexual offenses against children, and completing

other guideline amendments on economic crime and money laundering. The Commission is working expeditiously to pass an emergency amendment responding to the Act, with a vote on a permanent amendment slated for April.

I would like to focus my testimony on three areas. First, as part of our statutory responsibilities under the Sentencing Reform Act, the Commission collects data on every case sentenced under the federal sentencing guidelines, and I would like to share some of that data as it relates to ecstasy. Second, I would like to report some of our preliminary findings about ecstasy. Third, I would like to show you the sentencing impact of one of the options studied by the Commission as an example of how the Commission may achieve significant increases in penalties for ecstasy trafficking.

Commission Data Consistent with Data Reported by Other Agencies

Commission data are consistent with the disturbing trends previously reported to the Caucus. At the July 25, 2000, hearing on ecstasy held by this Caucus, which was attended by several members of our staff, the Drug Enforcement Agency (DEA) and the United States Customs Service both reported dramatic increases in the number of ecstasy seizures. DEA reported a ten-fold increase in the number of ecstasy seizures in one year, and Customs reported a seven-fold increase in the number of tablets seized from 1997 to 1999.

Our data indicate that the number of federal convictions for ecstasy trafficking reached 169 during fiscal year 2000, its highest level. (See Figure 1.) Although ecstasy offenses account for a very small proportion of federal drug trafficking defendants sentenced in federal court – approximately .05 percent of all federal drug trafficking cases – the rate of increase in ecstasy offenses is alarming. The 2000 figure represents a 48 percent increase above the 1999 figure of

114 cases, and a **dramatic 745 percent increase above the 1998 figure of 20 cases.**

Figure 2 demonstrates that as the number of federal ecstasy trafficking cases has increased, so has its dispersion among the various states. In fiscal year 1997, federal ecstasy trafficking cases were primarily confined to pockets in the southeast, west, and northeast of the nation. By fiscal year 2000, federal ecstasy trafficking defendants were sentenced in almost every state along the east coast and southeast, and several states in the southwest and midwest. For the last three years, Florida has experienced a greater number of federal ecstasy cases than any other state, with between 32 percent and 45 percent of all ecstasy cases in any given year. New York also has experienced a large proportion of federal ecstasy trafficking cases (28 percent in fiscal year 2000) because of its importation through international flights at John F. Kennedy International Airport.

Commission Meets with Law Enforcement Agencies and Solicits Public Comment

The Commission has looked to a number of other sources to help inform our decision making process as to what should be the appropriate penalties for ecstasy trafficking. Immediately upon passage of the Act, we began reviewing the available scientific and popular literature on ecstasy, engaging the Department of Justice through its *ex officio* Commissioner and his staff, and soliciting the input of interested agencies. In particular, we invited representatives of DEA to brief the Commission about the trafficking pattern of ecstasy and the challenges faced by law enforcement. We also invited representatives of the National Institute on Drug Abuse (NIDA) to brief the Commission on the pharmacological effects and health hazards associated with ecstasy abuse.

Furthermore, we have made great efforts to solicit public comment, which, as you know, is not required in order for the Commission to promulgate an emergency amendment. Nevertheless,

the Commission values public input and traditionally attempts to solicit public comment even when not required to do so. We published a preliminary proposal with issues for comment in the *Federal Register* on January 26, 2001. We also have scheduled a public hearing which will have occurred by the time of this hearing, on March 19, 2001, and expect to hear testimony from at least eight individuals about ecstasy (representing two-thirds of the total number of witnesses).

In response to our outreach, we have received literally hundreds of letters, e-mail, and other written submissions for our consideration from a diverse array of constituents, including clinicians, physicians, psychologists, academic researchers, users, defense attorneys, and other interest groups, in addition to the organizations and agencies that usually comment on proposed guideline amendments, such as the Department of Justice and the Federal Public and Community Defenders. The volume of public comment the Commission has received on the proposed changes to the guidelines for ecstasy trafficking far exceeds that for any issue this Commission has addressed since taking office in November 1999.

Commission Findings Support Increased Punishment For Ecstasy Trafficking.

Although I cannot discuss in great detail all of our findings within the confines of this statement, as required by the Act, the Commission will submit to Congress a full report describing the factors and information we considered within 60 days after enactment of the amendment to the sentencing guidelines. However, I can provide a brief overview of some of our findings that have caused the Commission to agree with the Sense of Congress expressed in the Act that the penalties for ecstasy trafficking should be increased. In short, we have learned that ecstasy has unique pharmacological effects, physiological risks, user profiles, collateral consequences, and trafficking patterns that make comparing ecstasy to other drugs of abuse very difficult, which has made setting the appropriate penalty structure quite challenging.

Pharmacological Effects and Physiological Risks

Ecstasy acts as both a stimulant and a hallucinogen. It has a chemical structure that has some similarity to methamphetamine (a stimulant) and mescaline (a hallucinogen). In reviewing the literature, meeting with experts, and reviewing public comment and testimony, there has been conflicting views as to the extent of the physical and mental harm caused by ecstasy.

On one hand, the Commission has received input from a number of researchers, clinicians, and other interest groups who hold the view that ecstasy is not intrinsically dangerous, is non-addictive, and does not produce violent behavior. In sum, in the expert opinion of these commentators, ecstasy does not produce either short-term or long-term harm to the human body.

On the other hand, the Commission has received information indicating that use of the drug speeds the heart rate, increases blood pressure, dilates the pupils and bronchi, stimulates the brain to increase motor activity, causes jaw clenching and grinding of the teeth, and enhances the senses with some perceptual changes.

Use of ecstasy can disrupt the body's temperature regulation and consequently cause increased body temperature. **This disruption can lead to overheating, dehydration, and even death**, risks which are especially heightened because ecstasy typically is used in dance club settings or "raves" in which the user dances for an extended period of time in hot and crowded conditions. Although still relatively rare, NIDA reports fatalities linked to ecstasy associated with dehydration, hyperthermia, heart or kidney failure arising from the body's inability to thermally regulate itself. Similarly, the Drug Abuse Warning Network (DAWN) estimates that the number of emergency department episodes associated with ecstasy has increased dramatically from 626 in 1997 to 1,135 in 1999.

Ecstasy use also presents long term physiological effects that are of equal concern.

Ecstasy is neurotoxic at the dosage levels typically used by people at raves: it kills the serotonin nerve cells in the brain. Serotonin is a neurotransmitter in the brain that is important to memory and other functions. The damage to these nerve cells is particularly dangerous because nerve cells very well may not grow back. If they do not grow back, **permanent impairment of memory functions can result.**

The Commission also has received information suggesting that, contrary to much of the public comment submitted, ecstasy is addictive and produces drug dependence. As a result, users often experience negative aftereffects such as depression, fatigue, and drowsiness, but also can experience a compulsive need to reuse the drug. Moreover, users can develop a tolerance for ecstasy over time that requires them to use larger and larger amounts of the drug to experience the same “positive” effects. As a result, they may take the drug more often and in larger amounts, thereby accelerating the potential for negative consequences to the body.

User Profile

The health risks associated with ecstasy, both short term and long term, are particularly alarming because several sources indicate that the drug is primarily used by our youth, persons in their late teens and early twenties attending rave parties often engaging in “pill-popping” contests. The drug is marketed to youth in several ways, for instance by stamping on the tablets cartoon characters and the logos of products popular with teenagers. Moreover, users report an increased willingness to communicate with others, a sense of belonging, and a closeness with others. These effects make ecstasy a particularly appealing drug to adolescents, who often are feeling the normal uncertainties and insecurities of impending adulthood. This drug offers a quick and dangerous fix for some young people.

Although the Commission does not collect data on the age of drug users, the data we

collect on the age of drug *traffickers* indicates that ecstasy traffickers generally are younger than traffickers of other major drugs. Over one-third of the federal offenders sentenced for ecstasy trafficking in fiscal year 2000 were between the ages of 21 and 25 years old. The average age was 27 years old. By comparison, the average age for federal offenders sentenced for trafficking heroin and methamphetamine was 33 years old.

Moreover, federal offenders sentenced for ecstasy trafficking generally have little or no prior incidents with law enforcement. Over 85 percent of these offenders are what we call “Category I” offenders, which means they have little or no criminal history. In contrast, only 31 percent of crack cocaine traffickers are Category I offenders, and only 55 percent of drug traffickers overall are Category I offenders.

Collateral Consequences

In determining the appropriate penalty structure for any drug, the Commission also carefully weighs the collateral consequences associated with the drug’s use and distribution, such as violence and environmental harm. The Commission has not discovered evidence to suggest that, at this time, ecstasy causes the same degree of collateral consequences that several other major drugs of abuse cause.

Ecstasy use does not generate the same violent impulses that, for instance, methamphetamine use causes. To the contrary, ecstasy is reported to produce feelings of peacefulness, empathy, and closeness with others. Moreover, anecdotal evidence suggests that the violence that has been associated with the distribution of certain other major drugs, such as crack cocaine or heroin, does not appear to be present with trafficking ecstasy. Unlike users of certain other drugs, users of ecstasy rarely commit crimes to support a habit. Commission data seems to confirm that finding. In fiscal year 1999, federal offenders sentenced for ecstasy trafficking

received a sentencing enhancement for weapon involvement in only 1.9 percent of cases, compared to 21.6 percent for crack cocaine trafficking and 12.2 percent for drug trafficking overall.

In addition, ecstasy is not reported to produce some of the negative secondary health consequences of drug use, such as the increased incidence of HIV and hepatitis, because it generally is not injected. Finally, because ecstasy generally is not produced in the United States, it does not pose the same risks to the environment that methamphetamine and amphetamine production do.

Trafficking Pattern

Ecstasy generally is manufactured in the Netherlands and Belgium, not in the United States. Western European traffickers – primarily Israeli and Russian organized crime syndicates – control importation of the drug into this country. Moreover, there is a sizeable financial incentive for doing so, as the cost to produce a pill is \$0.50 to \$1.00 and ultimately is sold to users for \$25.00 to \$40.00 per pill. Thus, there is plenty of room for manufacturers, importers, local distributors, and hand-to-hand dealers to make a profit.

DEA described to the Commission the relationship between the number of pills handled (at a single point in time) and the functional role in the distribution network. (See Figure 3). Importers generally carry 50,000 to 100,000 pills; upper and middle level distributors carry 5,000 to 10,000 pills; local distributors carry 500 to 1,000 pills; and hand-to-hand dealers at a rave, for example, typically carry 50 to 100 pills.

Commission Studies Significant Increases To Ecstasy Trafficking Penalties

The ecstasy trafficking pattern is particularly instructive for the Commission's consideration of the appropriate penalty structure for such offenses. The sentencing guidelines for

other major drugs of abuse – as well as statutory mandatory minimums set by Congress – generally attempt to distinguish between high level “kingpin” distributors and low level, local distributors. The penalties for drug trafficking generally are structured so that “major traffickers” (traffickers responsible for manufacturing or delivering large quantities) receive ten year sentences, and “serious traffickers” (managers of the retail level traffic and involved in substantial street quantities) receive five year sentences.

The challenge for the Commission is to set a penalty structure that is sufficiently stringent to achieve the objectives set forth by Congress in the Ecstasy Anti-Proliferation Act and shared by the Commission, but also allows the guidelines to draw adequate penalty distinctions between drug offenders based on their functional role. Therefore, the information provided to the Commission suggests that the guideline sentences for offenders with 500 to 1,000 pills – the local distributors – should be approximately five years, and the guideline sentences for offenders with 5,000 to 10,000 pills – the upper and middle level distributors – should be approximately ten years.¹

The options studied by the Commission will significantly increase the penalties for ecstasy trafficking. For instance, one option is to amend the guidelines so that 200 grams of ecstasy would trigger a five year sentence, and 2,000 grams would trigger a ten year sentence. This translates to 800 pills and 8,000 pills of ecstasy, respectively, which reflects the trafficking pattern described above. (See Figure 4.) Thus, under the proposal, local distributors would receive five year sentences, and upper and middle level distributors would receive ten year

¹ Ecstasy most often is sold in tablet form. These tablets typically weigh .25 grams, with the weight of the actual ecstasy accounting for about half of the total weight. Thus, four pills weigh one gram. The trafficking of 800 pills would result in a five-year sentence under a guideline setting that penalty for 200 grams.

sentences, with even more severe penalties available for even more serious traffickers.

In order to grasp more fully the significance of this increase, consider that under the current guidelines 11,428 pills are required in order to reach a five year sentence, and 114,280 pills are required for a ten year sentence. (See Figure 4.) **Thus, 1,329 percent fewer pills would trigger five and ten year sentences under this option.**

The sentencing impact of this option is equally significant. **This option would increase the guideline sentence for trafficking 800 pills by 300 percent from 15 months to 60 months, and for 8,000 pills by almost 200 percent from 41 months to 120 months.** (See Figure 5.)

Moreover, the Commission estimates that the average sentence for ecstasy trafficking – after accounting for other aggravating and mitigating factors, substantial assistance departures, and departures on other grounds – will increase by 131 percent from 26 months to 60 months years.

(See Figure 6.)

Conclusion

As you can see, the Commission has been charged with a difficult task, and we have been working very hard at it since the date of enactment. Ecstasy is a serious drug with unique properties that make setting the appropriate penalty structure a challenge. The Commission shares Congress's concern about the increase in ecstasy trafficking and abuse, particularly by our youth, and the need for aggressive law enforcement to combat the growing problem. The Commission is studying significant increases in the penalties for ecstasy trafficking and expects to complete its work on this issue soon. We look forward to working closely with the Caucus on ecstasy trafficking, as well as other drugs of concern.