

Drugs

6/16/14

Figure I

DISTRIBUTION OF GUIDELINE DRUG OFFENSES¹
Fiscal Year 2013

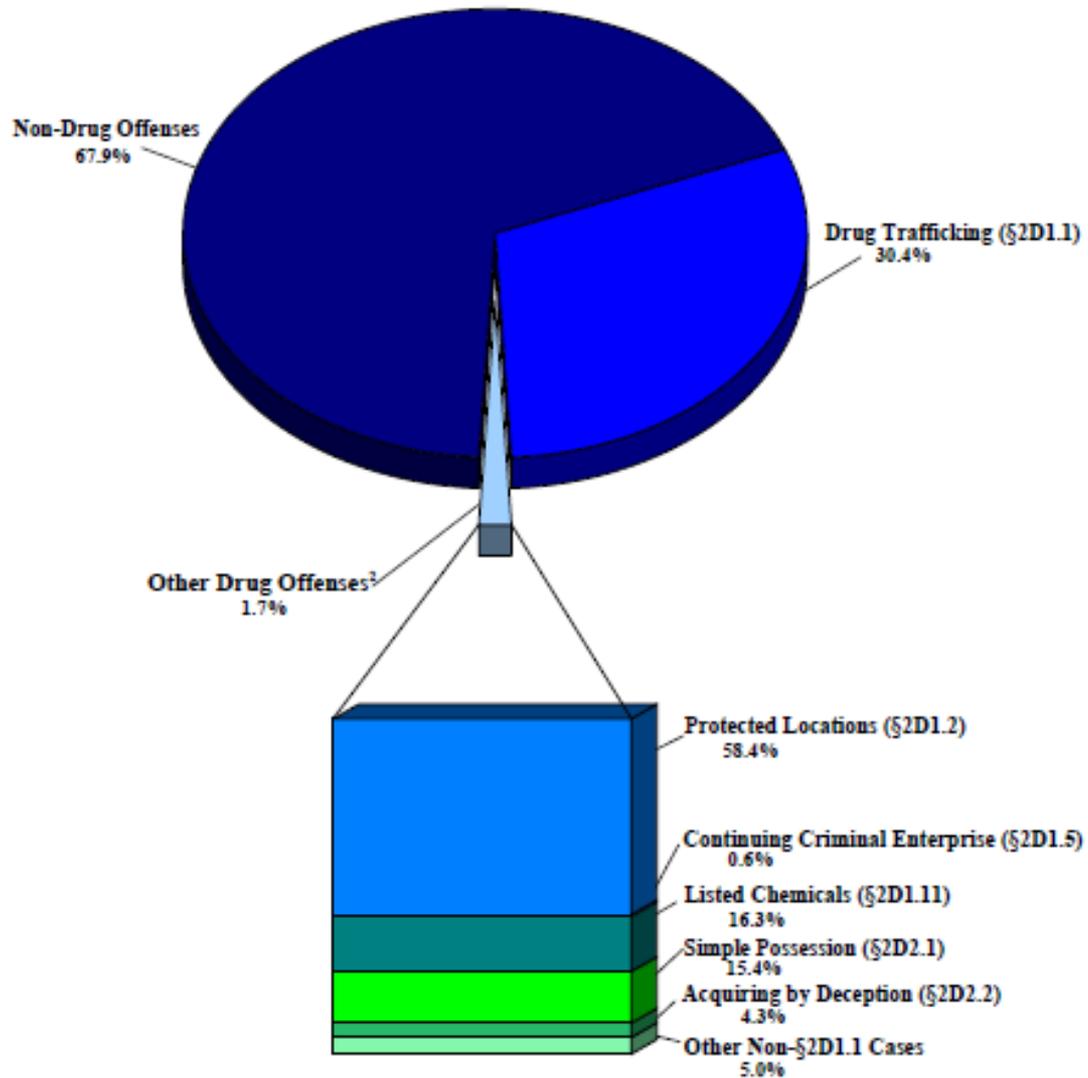
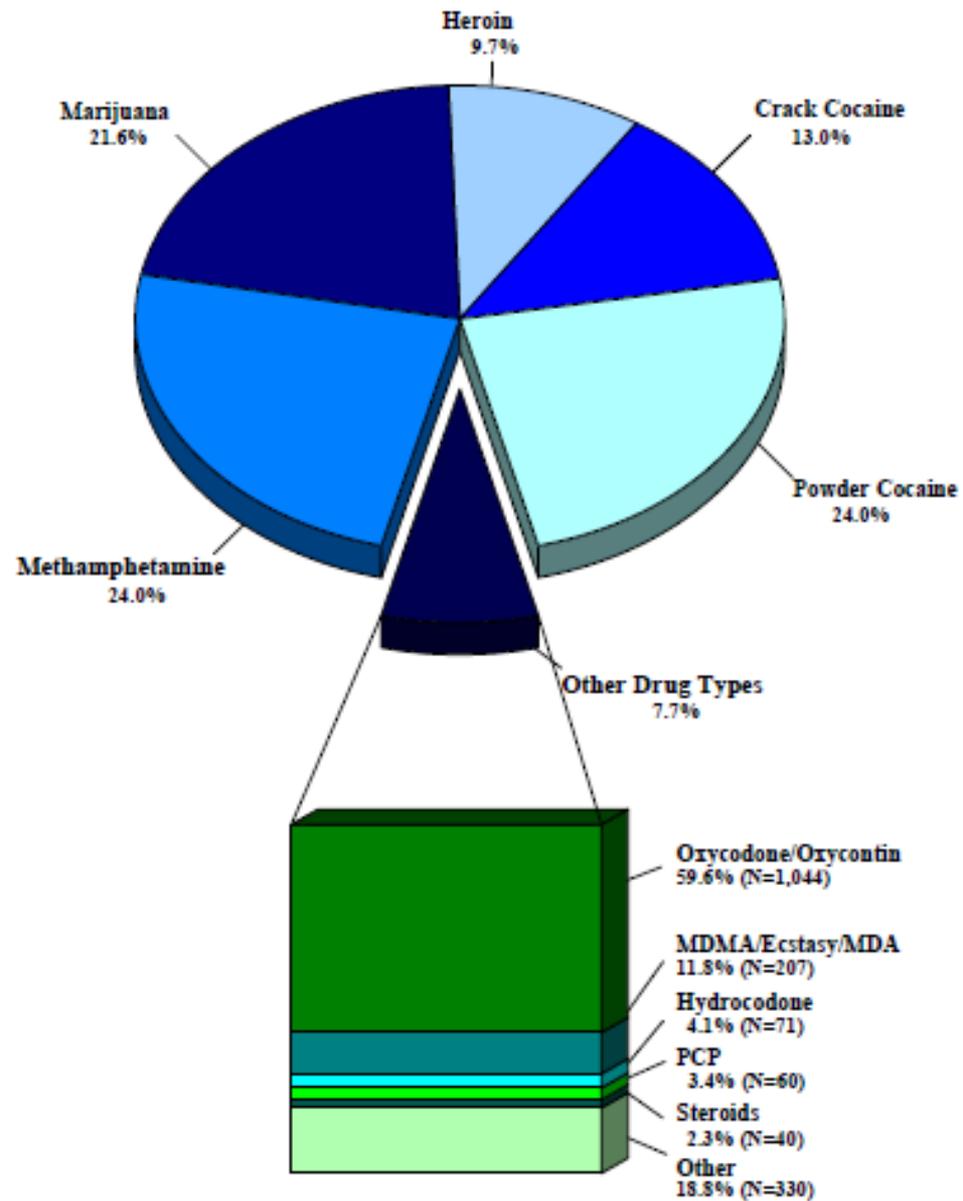


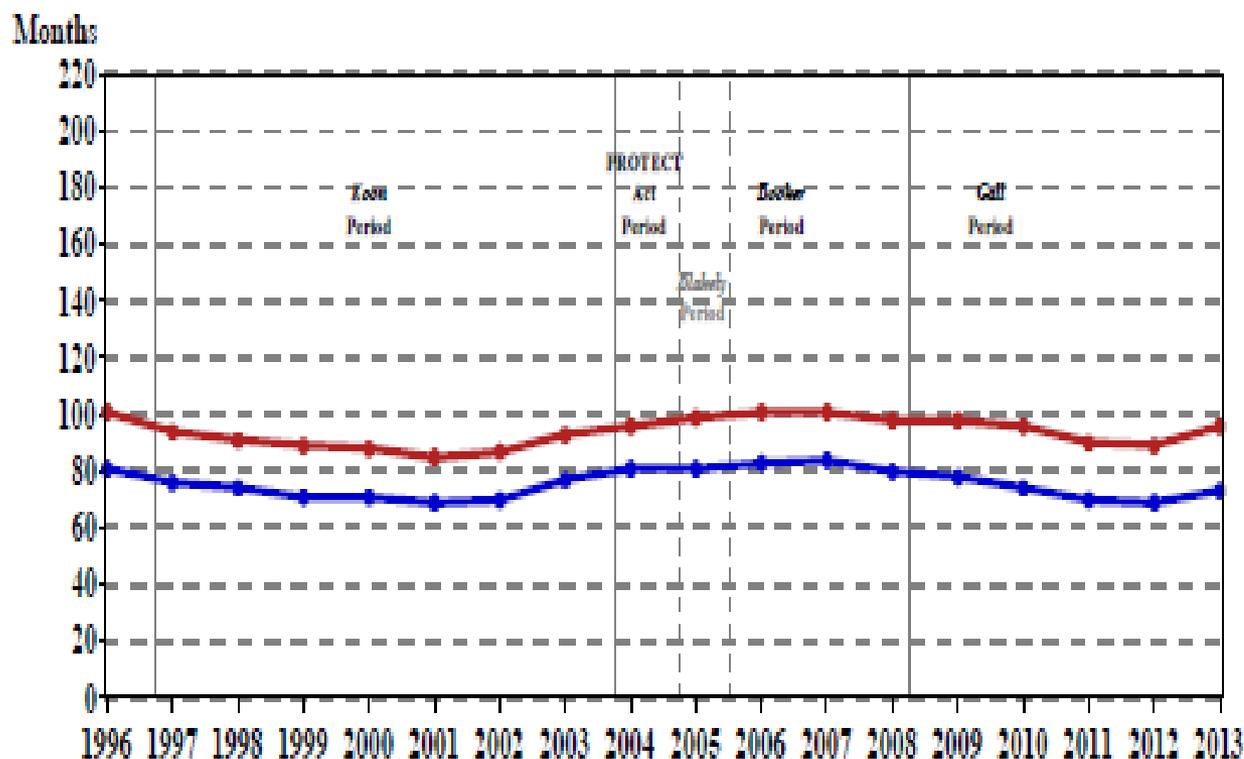
Figure K

DISTRIBUTION OF DRUG TYPE¹
Fiscal Year 2013



Average Guideline Minimum and Sentence Imposed Drug Trafficking Offenses Fiscal Years 1996-Preliminary 2013

■ Average Guideline Minimum ■ Average Sentence Imposed



Only cases with complete guideline application information sentenced under USSC §§2D1.1 or 2D1.2 were included in this analysis.

Cases with guideline minimums of 470 months or greater (including life) or probation were included in the guideline minimum average computations as 470 months and zero months, respectively. Guideline minimums account for applicable statutory mandatory penalties. Cases missing information on guideline minimum were excluded from the guideline minimum average computation. Cases with sentences of 470 months or greater (including life) or probation were included in the sentence average computations as 470 months and zero months, respectively. In addition, the information presented in this figure includes time of confinement as described in USSC §5C1.1. Cases missing information on sentence imposed were excluded from the sentence average computation.

SOURCE: U.S. Sentencing Commission, 2011 Booker Report Datafiles, 2012-Preliminary 4th Quarter 2013 Datafiles, USSCFY12-USSCFY13.

§2D1.1 - Drugs

Unlawful Manufacturing, Importing,
Exporting, or Trafficking
(Including Possession with Intent
to Commit These Offenses);
Attempt or Conspiracy

Proposed Amendments to §2D1.1

To Take Effect on November 1, 2014

- Base offense levels for *most* drug quantities will be lowered by 2-levels
 - The Commission is currently considering whether the amendment should be “retroactive,” thereby allowing judges to give sentence reductions for inmates already serving sentences, pursuant to §1B1.10 and 18 USC § 3582(c)(2)

Proposed Amendments to §2D1.1 (cont.)

To Take Effect on November 1, 2014

- A new SOC for marijuana cultivation at (b)(14) will reorder the SOCs
 - Note that a November 2012 amendment reordered the application notes to correspond more closely with sequence of the BOLs and SOCs

Relevant Conduct & Multiple Counts

§§2D1.1 & 1B1.3(a)(2) & 3D1.2(d)

- Acts in the same course of conduct, common scheme or plan as the offense(s) of conviction will be included
- There will only be a single application of the multiple counts of §2D1.1, based on all relevant conduct

§2D1.1 Drug Trafficking, Etc.

(a) Base Offense Level (apply the greatest):

	<u>Level</u>
(1) defendant convicted under 21/841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 960(b)(1), (b)(2), or (b)(3), and conviction establishes death/serious injury from drug use; and committed after similar prior conviction	43
(2) defendant convicted under 21/841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 960(b)(1), (b)(2), or (b)(3), and conviction establishes death/serious injury from drug use	38

§2D1.1 Drug Trafficking, Etc.

(a) Base Offense Level (apply the greatest):

	<u>Level</u>
(3) defendant convicted under 21/841(b)(1)(E) or 960(b)(5), and conviction establishes death/serious injury from drug use; and committed after similar prior conviction	30
(4) defendant convicted under 21/841(b)(1)(E), or 960(b)(5), and conviction establishes death/serious injury from drug use	26

§2D1.1 Drug Trafficking, Etc.

(a) Base Offense Level (apply the greatest):

(5) the offense level from the Drug Quantity Table

EXCEPT if *mitigating* role (§3B1.2) applies:

<u>BOL</u>	<u>Reduction</u>
32	-2
34 or 36	-3
38	-4

If resulting BOL is greater than 32, and *minimal* role (§3B1.2(a)) applies, decrease to BOL 32

Mitigating Role Reduction

§2D1.1(a)(5)

- After the BOL reduction(s), the SOC's and other adjustments are then applied
- Necessarily the defendant will also receive a mitigating role adjustment in Chapter Three (§3B1.2)

Drug Quantity Table

Base Offense Levels for Cocaine

150	KG	↑	Level 38
50	KG	↑	Level 36
15	KG	↑	Level 34
5	KG	↑	Level 32
3.5	KG	↑	Level 30
2	KG	↑	Level 28
500	G	↑	Level 26

400	G	↑	Level 24
300	G	↑	Level 22
200	G	↑	Level 20
100	G	↑	Level 18
50	G	↑	Level 16
25	G	↑	Level 14
Less than 25	G	↑	Level 12

Weight of Controlled Substance

Note (A) to Drug Quantity Table

- Unless otherwise specified, the weight of a controlled substance refers to the entire weight of any mixture or substance containing a detectable amount of the controlled substance
- If a mixture or substance contains more than one controlled substance, the weight is based on the one that results in the greatest offense level

“Mixture or Substance”

§2D1.1, App. Note 1

- Mixture or substance does not include materials that must be separated for use, *e.g.*, waste water from an illicit laboratory used to manufacture a controlled substance
 - Possible distinctions for statutory determinations

Drug “Actual” (*i.e.*, Pure Drug)

Drug Quantity Table Notes (A), (B), & (C)

- Drug purity is only factored for methamphetamine, amphetamine, “ice”, oxycodone, and PCP
- A comparison is made between the drug “actual” and the mixture or substance for meth, amphetamine, and PCP

Drug Equivalency Tables

§2D1.1, App. Note 8

- Drugs not included on the Drug Quantity Table are converted to marijuana
 - *E.g.*, MDMA (“ecstasy”) 1 gm. = 500 gm. marijuana
- Different types of drugs are converted to marijuana so as to be added together
 - *E.g.*, cocaine and heroin

Controlled Substances Not Referenced

§2D1.1, App. Note 6

- Determine the most closely related substance by considering the following
 - Similar chemical structure
 - Similar stimulant, depressant or hallucinogenic effect on the central nervous system
 - Lesser or greater quantity needed to produce a similar effect on the central nervous system

§2D1.1 Specific Offense Characteristics

- The most frequently applied SOCs at §2D1.1
 - (b)(1) Firearm/Dangerous Weapon - 10.9%
 - Note: An additional 5% (appx.) did not get this SOC because of a § 924(c) conviction for the firearm
 - (b)(16) “Safety Valve” Subdivision Criteria - 39.0%

Based on FY2012 sentencing data

§2D1.1 Specific Offense Characteristics

- No other §2D1.1 SOC is applied more often than 2% of the cases
 - (b)(5) imported meth/amphetamine or chemicals used in manufacturing these - 1.1%
 - (b)(12) “maintaining premises” - 2%

Based on FY2012 sentencing data

(b) Specific Offense Characteristics

	<u>Level</u>
(1) firearm, dangerous weapon possessed	+2

(16) if defendant meets the <u>subdivision criteria</u> (1)-(5) of §5C1.2(a) (“the safety valve”)	-2
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“Firearm” SOC

§2D1.1(b)(1) & App. Note 11

“...should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense.”

Note: Under relevant conduct a defendant can be held accountable for a coparticipant’s firearm

“Firearm” SOC & 18 U.S.C. § 924(c)

§2D1.1(b)(1) & §2K2.4, App. Note 4

- When the defendant is also convicted of § 924(c) (Use/Carry/Possession of a Firearm in a Crime of Violence or Drug Trafficking) **do not apply** the dangerous weapon SOC at §2D1.1(b)(1)
 - § 924(c) mandatory min. *at least 5 yrs. consecutive*
 - This accounts for *any* weapon in relevant conduct
 - §2D1.1(b)(2) (use of violence) also **would not apply**

SOC (b)(16) at §2D1.1

2-Level Decrease

- The defendant must only meet the criteria set forth in **subdivisions (1)–(5)** of subsection (a) of §5C1.2 (“The Safety Valve”)
 - Defendant does not have to be convicted under select statutes listed at §5C1.2(a) that qualify for “The Safety Valve” (18 USC § 3553(f))
 - Defendant does not have to otherwise be subject to a mandatory minimum penalty

“Safety Valve”

18 USC § 3553(f)
& §5C1.2

“Safety Valve”

18 U.S.C. § 3553(f)

- Court makes determination; no government motion required
- Sentence without regard to mandatory minimums for violations of select drug statutes
- Downward departures for mitigating factors or variances possible

“Safety Valve”

§5C1.2(a)

In the case of an offense subject to a mandatory minimum sentence under 21 U.S.C. §§ 841, 844, 846, 960, or 963, the court shall impose a sentence in accordance with the applicable guidelines without regard to any statutory minimum sentence, if the court finds the defendant meets the criteria set forth below:

§5C1.2(a)

Subdivisions (1) – (5)

1. Defendant does not have more than 1 Criminal History Point
2. Defendant did not use violence/threats of violence or possess a firearm or other dangerous weapon in connection with the offense
3. Offense did not result in death or serious bodily injury

4. Defendant was not an organizer/leader/manager/supervisor of others in the offense; was not engaged in a CCE
5. Not later than the time of the sentencing hearing, defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or common scheme or plan.

Use of the Term “Defendant” in the Safety Valve

- **NOTE:** while a defendant may be accountable for a firearm at §2D1.1(b)(1) based on the act of another, he/she may still qualify for the SOC reduction at §2D1.1(b)(16) (“safety valve” subdivision criteria) or for the “safety valve” itself, because §5C1.2(a)(2) only requires that “the **defendant** did not ...possess a firearm... in connection with the offense”

§5C1.2(b)

In the case of a defendant

1. Who meets the criteria set forth in subsection (a); and
2. Who is facing a mandatory minimum sentence of at least five years,

The offense level applicable from Chapters Two and Three shall not be less than level **17**

Note: The guideline range for OL 17 at CHC I is 24-30 mos.; a departure or variance below this range is still possible³²

END