Analysis of Drug Trafficking Offenders

January 2014

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The Commission is providing an analysis of drug trafficking cases to inform public comment on proposed guideline amendments to the drug trafficking guideline.

Submit public comment on this and other proposed amendments
by e-mailing us at: **public_comment@ussc.gov**
Comments are due by ***March 18, 2014.***

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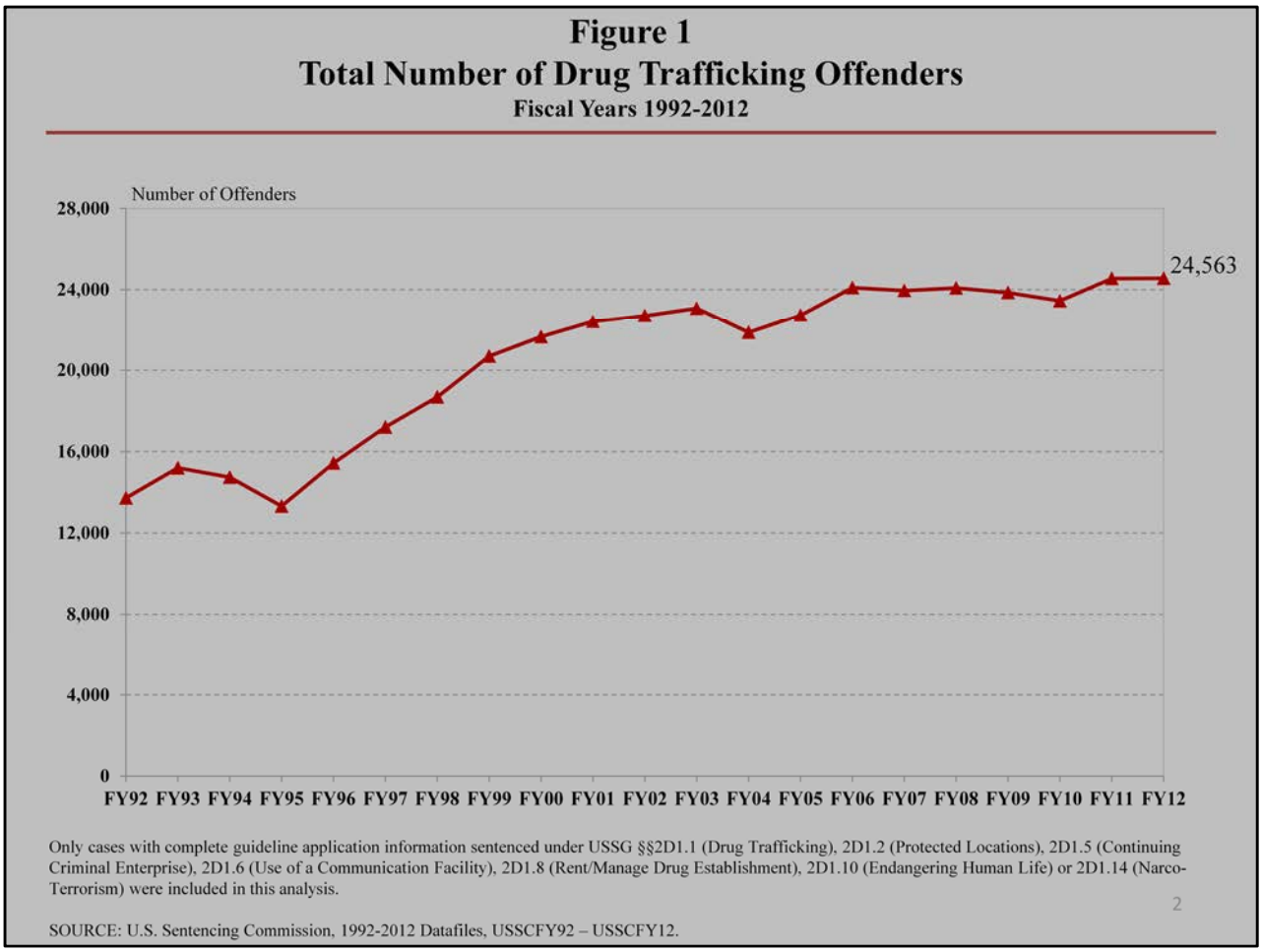

Figure 1 shows the trend in the number of federal drug trafficking offenders sentenced between fiscal year 1992 through fiscal year 2012. The number of cases has increased by 79 percent during this period from 13,721 to 24,563.

Five drug types account for 93.8 percent of all these cases in FY12 and will be the focus of this presentation. These drug types are powder cocaine, crack cocaine, heroin, marijuana, and methamphetamine.

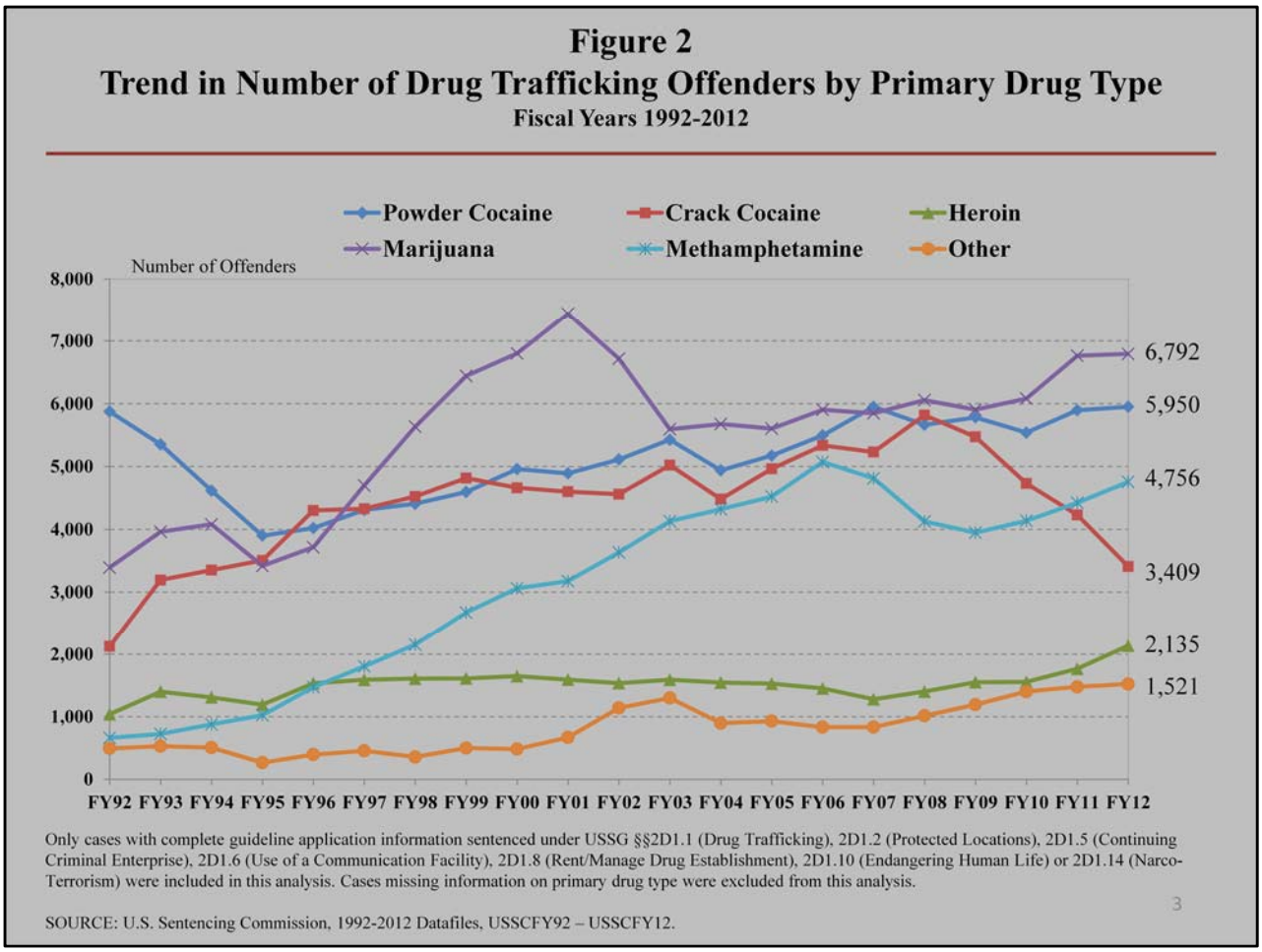

Figure 2 presents the trend in the number of cases for each of these drug types. Generally, the number of cases in each drug type has increased since 1992.

Recently, this trend was reversed in crack cocaine cases which have steadily fallen since 2008.

All the remaining drug types are classified as "Other Drug". This is the bottom line on the chart. These cases were primarily LSD throughout most of the 1990s and then switched to MDMA cases until 2010 when they became primarily Oxycodone cases.

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Table 1
Proportion of Drug Trafficking Offenders Sentenced in a Single Year and Drug Traffickers Incarcerated in the Bureau of Prisons

	Number of Drug Traffickers	Total Population	Percent of Drug Traffickers in the Population
Offenders Sentenced in a Single Fiscal Year[1]	24,563	74,495	33.0
BOP Inmate Population[2]	100,114	199,810[3]	50.1

[1] Only cases with complete guideline application information were included in this analysis. Drug Trafficking offenders include offenders sentenced under USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life) or 2D1.14 (Narco-Terrorism).
[2] Data as of October 26, 2013. Data retrieved from the BOP's Monthly Quick Facts About the Bureau of Prisons (http://www.bop.gov/news/quick.jsp) on November 18, 2013.
[3] BOP reports a total of 211,195 inmates as of October 26, 2013. However, offense type data is only calculated for inmates with offense-specific information available (N=199,810).

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SOURCE: U.S. Sentence Commission, 2012 Datafile, USSCFY12 and http://www.bop.gov/news/quick.jsp (Viewed November 18, 2013).

Table 1 compares the proportion of drug cases sentenced in the last fiscal year with the composition of the Federal Bureau of Prisons

Because of the relatively long sentences for drug trafficking offenses, the proportion of offenders in prison is greater than the proportion sentenced in a single year.

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Table 2
Median Base Offense Level and Corresponding Drug Quantity for Drug Trafficking Offenders by Primary Drug Type
Fiscal Year 2012

	Median BOL	Corresponding Drug Quantity (in Grams)	Corresponding Drug Quantity (in Pounds)
Powder Cocaine	30	3,500 – 5,000	7.7 – 11.0
Crack Cocaine	26	28 - 112	0.1 – 0.2
Heroin	28	400 - 700	0.9 – 1.5
Marijuana	22	60,000 – 80,000	132.3 – 176.4
Methamphetamine	34	1,500 – 5,000	3.3 – 11.0

Only cases with complete guideline application information sentenced under USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life) or 2D1.14 (Narco-Terrorism) were included in this analysis. Base offense levels with the mitigating role cap applied were converted to the original base offense level specified in the Drug Quantity Table. Cases missing information required for a given analysis were excluded from that analysis.

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SOURCE: U.S. Sentencing Commission, 2012 Datafile, USSCFY12.

Table 2 presents the median Base Offense Level for each drug type. The Base Offense Level is the severity index used in drug trafficking cases based solely on the weight of the drug.

The median is the midpoint of the distribution of cases - that is, half of the cases lie above this value and half lie below.

There are substantial differences in offense severity and corresponding drug weights depending on the type of drug involved in the offense

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Table 3
Aggravating and Mitigating Role Adjustments for Drug Trafficking Offenders by Primary Drug Type
Fiscal Year 2012

	Aggravating Role (%)	Mitigating Role (%)
Powder Cocaine	8.3	18.1
Crack Cocaine	6.0	5.0
Heroin	8.0	19.5
Marijuana	4.9	23.3
Methamphetamine	6.2	23.5

Only cases with complete guideline application information sentenced under USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life) or 2D1.14 (Narco-Terrorism) were included in this analysis. Cases missing information on primary drug type were excluded from this analysis.

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SOURCE: U.S. Sentencing Commission, 2012 Datafile, USSCFY12.

Table 3 presents information on a specific sentence enhancement and reduction corresponding to the role the offender played in the offense.

Supervisors and leaders receive a sentence enhancement called Aggravating Role.

The least culpable offenders receive a sentence reduction called Mitigating Role.

The application of these factors differs by type of drug involved in the offense.

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Table 4
Average Length of Imprisonment for Drug Trafficking Offenders by Primary Drug Type
Fiscal Year 2012

	Imprisoned (%)	Average Prison Term (Months)
Powder Cocaine	97.5	84
Crack Cocaine	98.3	97
Heroin	96.7	73
Marijuana	94.5	36
Methamphetamine	98.8	93

Only cases with complete guideline application information sentenced under USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life) or 2D1.14 (Narco-Terrorism) were included in this analysis. Imprisoned offenders include offenders sentenced to prison only and those sentenced to prison plus some alternative confinement as described in USSG §5C1.1. Cases with sentences of 470 months or greater (including life) were included in the sentence average computations as 470 months. Cases missing information on length of imprisonment or primary drug type were excluded from this analysis.

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SOURCE: U.S. Sentencing Commission, 2012 Datafile, USSCFY12.

Table 4 presents the average length of imprisonment by drug type.

Nearly all drug trafficking offenders receive a prison sentence. The length of that sentence is the result of the offense severity as measured by the quantity of drugs involved in the offense, whether a weapon was involved, the role played by the offender in the offense, and the offender's criminal history among other factors.

These factors differ by drug type as do the corresponding average sentences.

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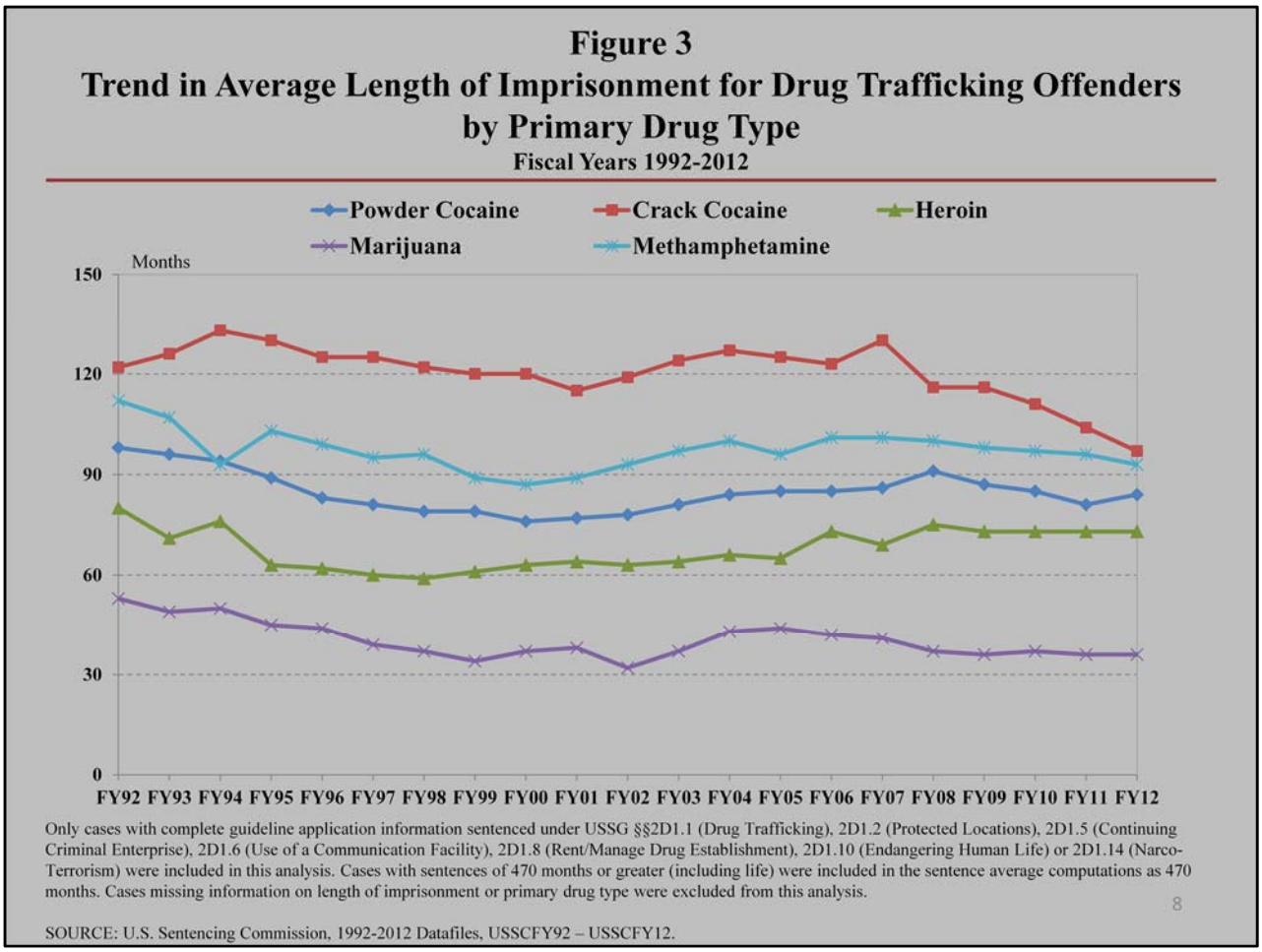

Figure 3 shows the trend in average prison sentence for each drug type between 1992 and 2012.

The recent trends in sentence length for most drug types have been fairly stable for the past several years.

The exception is among crack cocaine offenders whose sentences have steadily declined since 2008. This is likely a result of the Commission's two-level reduction to the Drug Quantity Table in 2007 and the impact of the Fair Sentencing Act in 2010.

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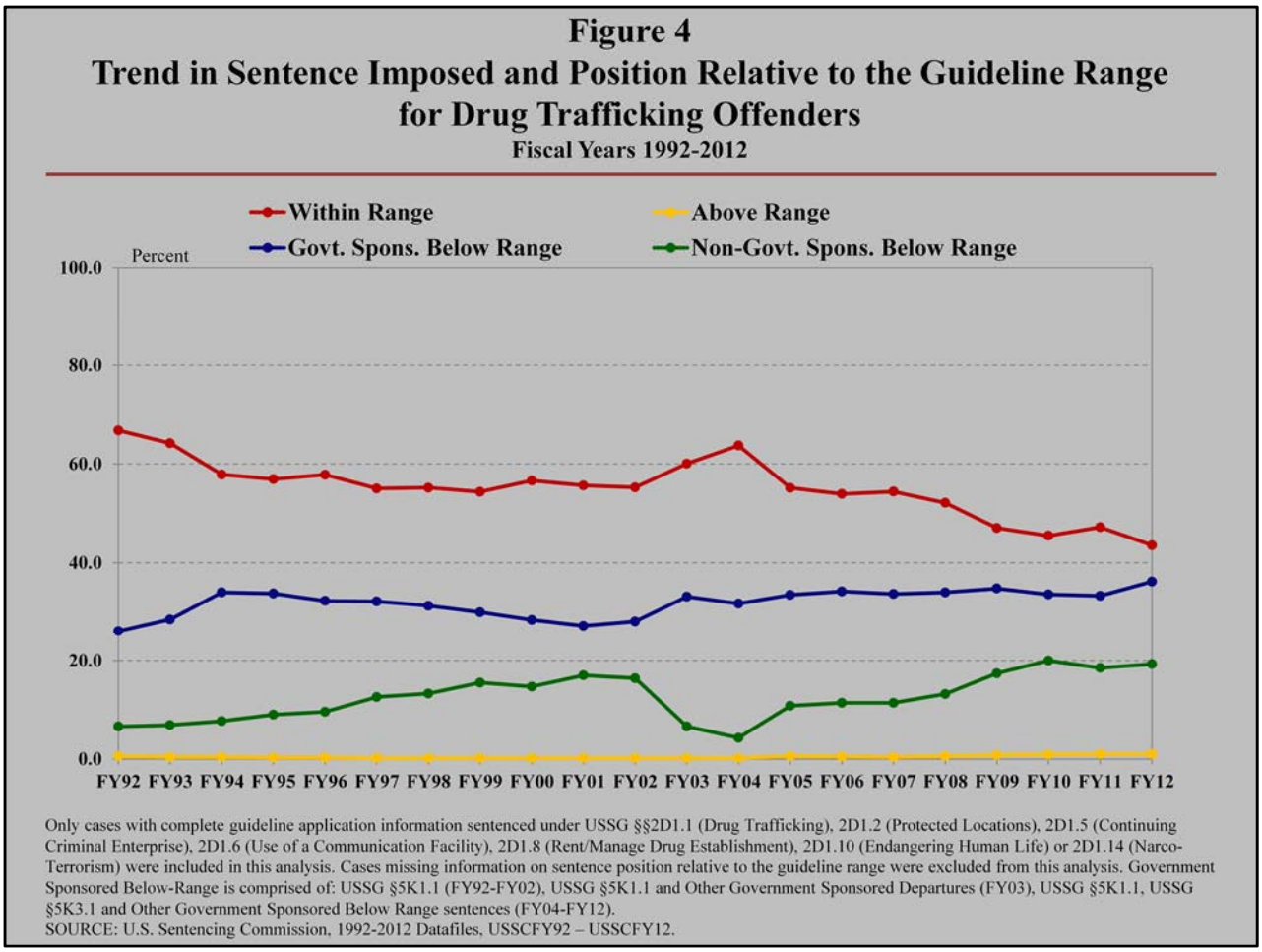

Figure 4 presents sentencing trends relative to the guideline range. Sentences can be classified as:

- Within the guideline range
- Above the guideline range
- Government Sponsored Below Range Sentence, which the court grants pursuant to a request from the government. These can come in one of three forms:
  - a reduction pursuant to the government's Early Disposition Program;
  - as a result of providing Substantial Assistance to authorities; or
  - simply at the request of the government for some other reason.
- Non Government Sponsored Below Range Sentences, which are imposed without a motion from the government.

Within range sentences have generally declined during this period. **Above range sentences** are rarely given and the trend hasn't noticeably changed during this time period. **Government Sponsored Below Range sentences** - for any of the three reasons mentioned - have been relatively stable during the past 10 years. **Non Government Sponsored Below Range Sentences** have increased over the past 10 years from 4.3 percent in 2004 when such reductions were at their lowest level to 19.3 percent in 2012.

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Average Guideline Minimum and Average Sentence Imposed by Base Offense Level

Fiscal Year 2012

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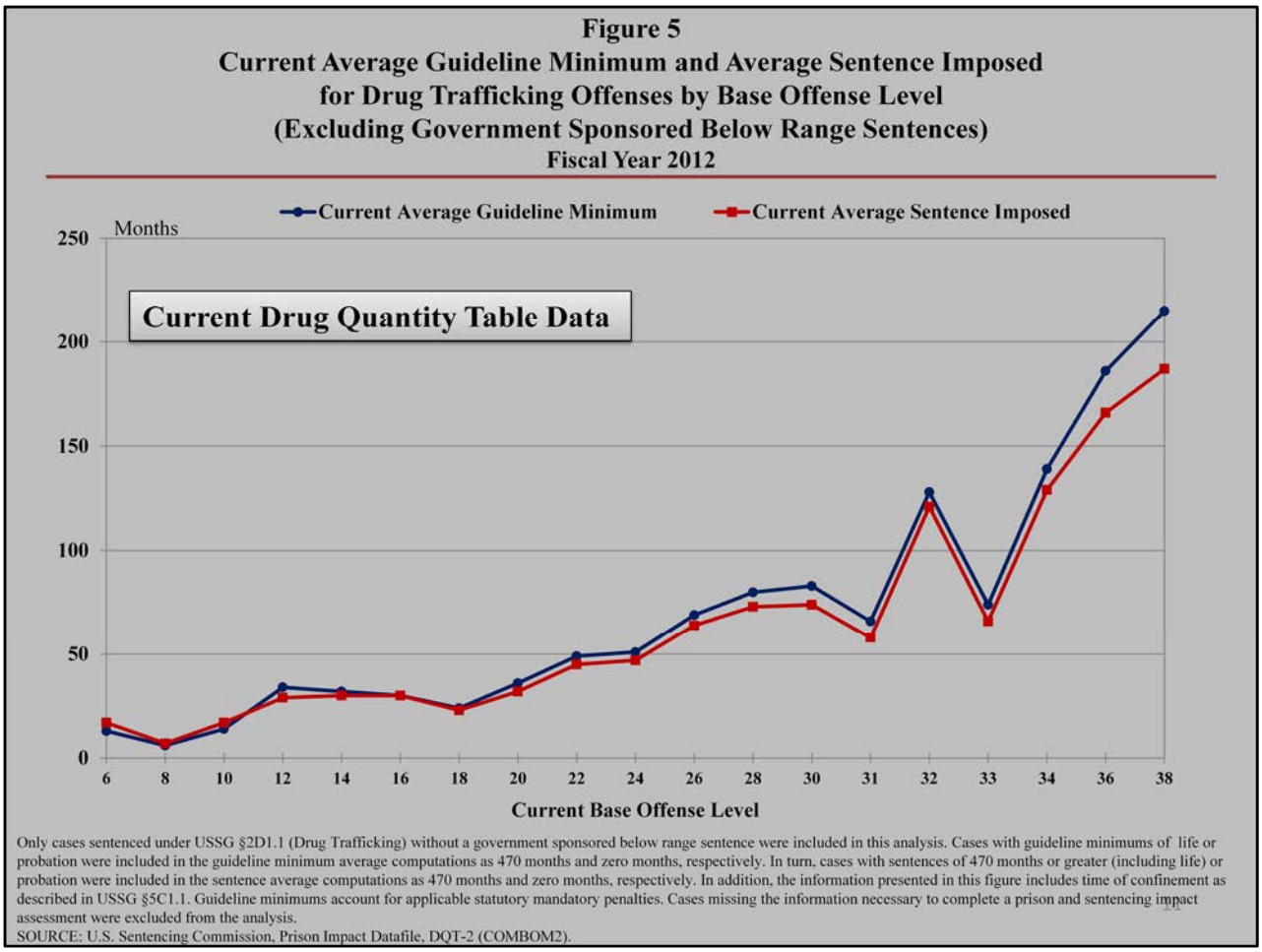

Figure 5 begins an analysis comparing the average guideline minimum applicable in the case with the average sentence imposed in that case. These analyses compare these values at each drug quantity level as determined in the Drug Quantity Table.

For example at Base Offense Level 26, the average guideline minimum includes the base offense level, all aggravating factors and all of the mitigating factors - as well as the impact of the criminal history score. These various factors, which increase or decrease sentences, are combined for all Base Offense Level 26 offenders and an average guideline minimum computed. Then the average sentence imposed on all Base Offense Level 26 offenders is calculated and plotted on the chart to provide a comparison.

To determine what courts do absent the influence of the government asking for a sentence reduction - these cases include all within range, above range, and non government sponsored below range cases - only government sponsored below range cases are omitted.

Figure 5 shows this comparison across all Base Offense Levels for all drugs combined. Subsequent charts provide this analysis for each of the major drug types. The lines overlap in some places and diverge in others. The majority of drug trafficking offenders typically have Base Offense Levels between 26 and 32. In this chart there is a general lack of overlap between the guideline minimum and the sentence imposed.

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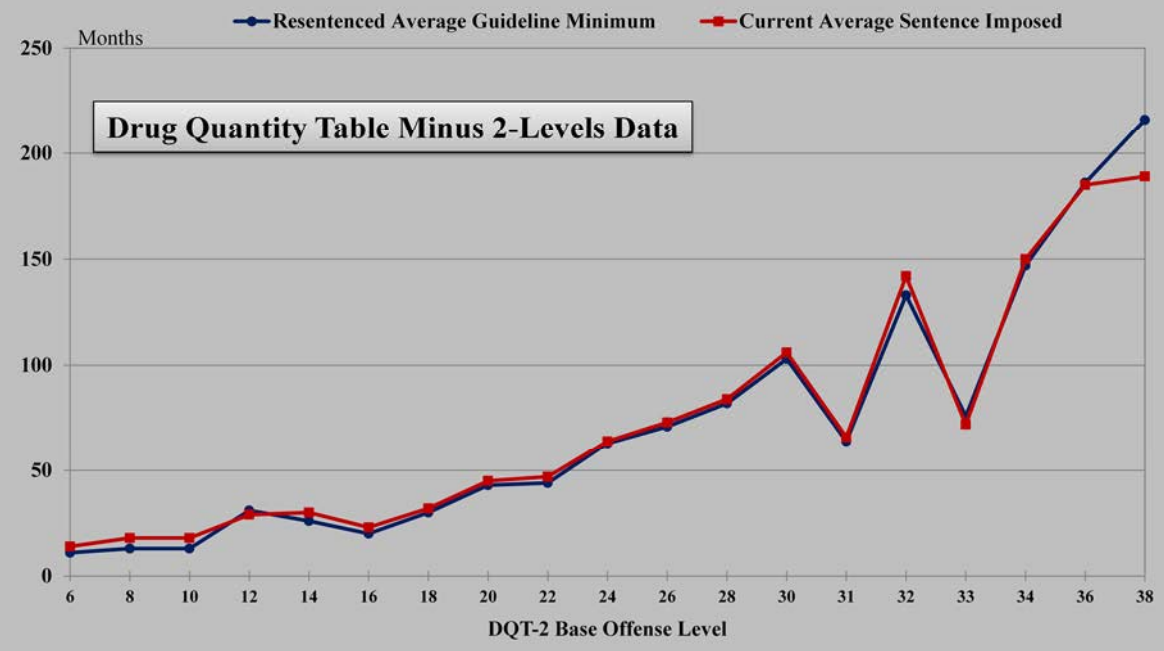
Figure 6
Resentenced Average Guideline Minimum and Current Average Sentence Imposed for Drug Trafficking Offenses by Resentenced Base Offense Level (Excluding Government Sponsored Below Range Sentences)
Fiscal Year 2012



Only cases sentenced under USSG §2D1.1 (Drug Trafficking) without a government sponsored below range sentence were included in this analysis. Cases with guideline minimums of life or probation were included in the guideline minimum average computations as 470 months and zero months, respectively. In turn, 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 USSG §5C1.1. Guideline minimums account for applicable statutory mandatory penalties. Cases missing the information necessary to complete a prison and sentencing impact assessment were excluded from the analysis.
SOURCE: U.S. Sentencing Commission, Prison Impact Datafile, DQT-2 (COMBOM2).

Figure 6 presents the same analysis but the average guideline minimum has been recalculated to reflect the proposed amendment reducing the Drug Quantity Table by two levels.

In this chart of all drug trafficking cases, the lines generally overlap such that the average guideline minimums are more closely related to the actual average sentence imposed.

This finding of greater overlap using the proposed table generally holds true for each of the major drug types with the exception of marijuana.

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Average Guideline Minimum and Average Sentence Imposed by Base Offense Level for Each Primary Drug Type

Fiscal Year 2012

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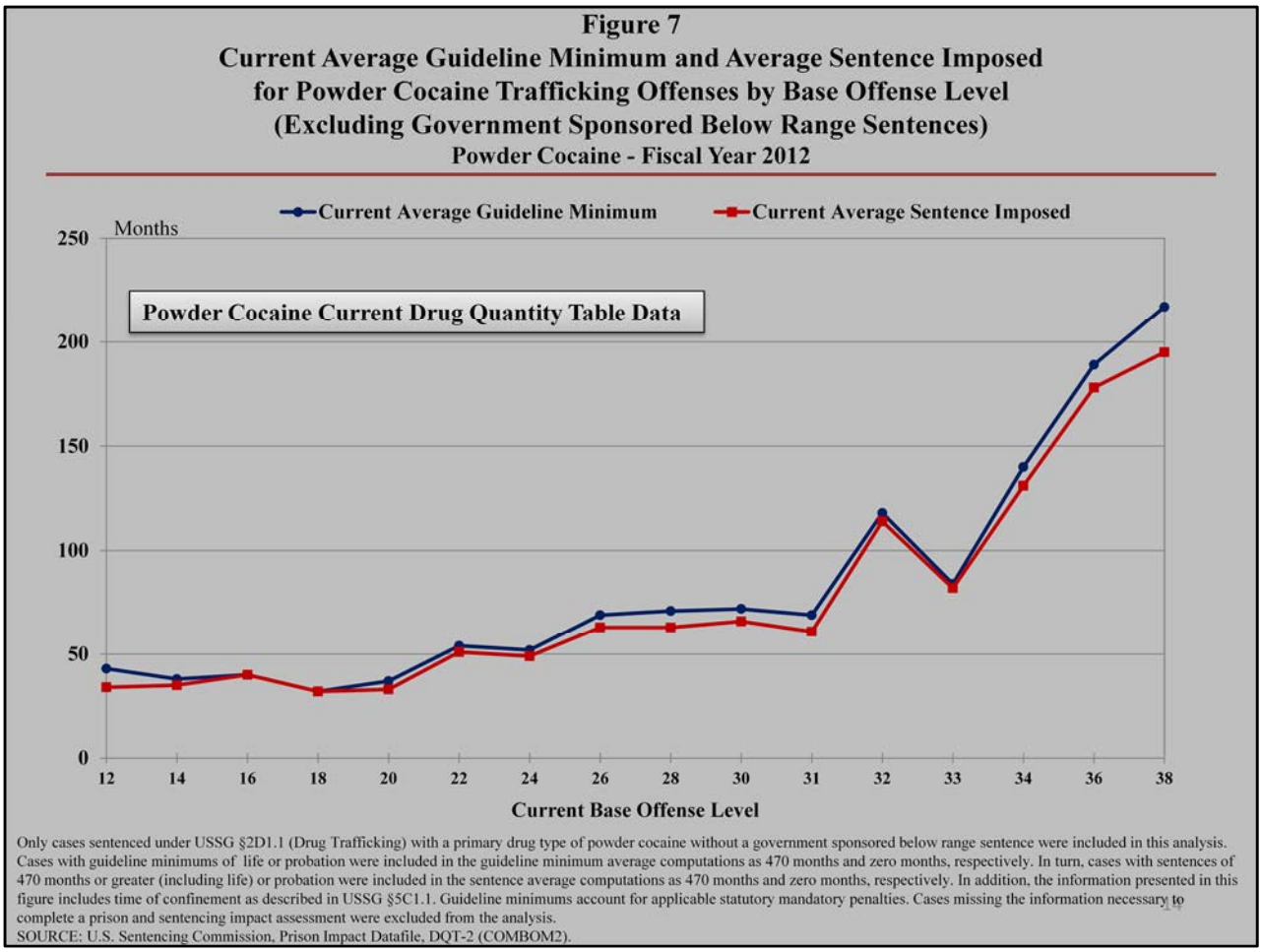

Figure 7 presents this analysis on **powder cocaine** cases using the current Drug Quantity Table.

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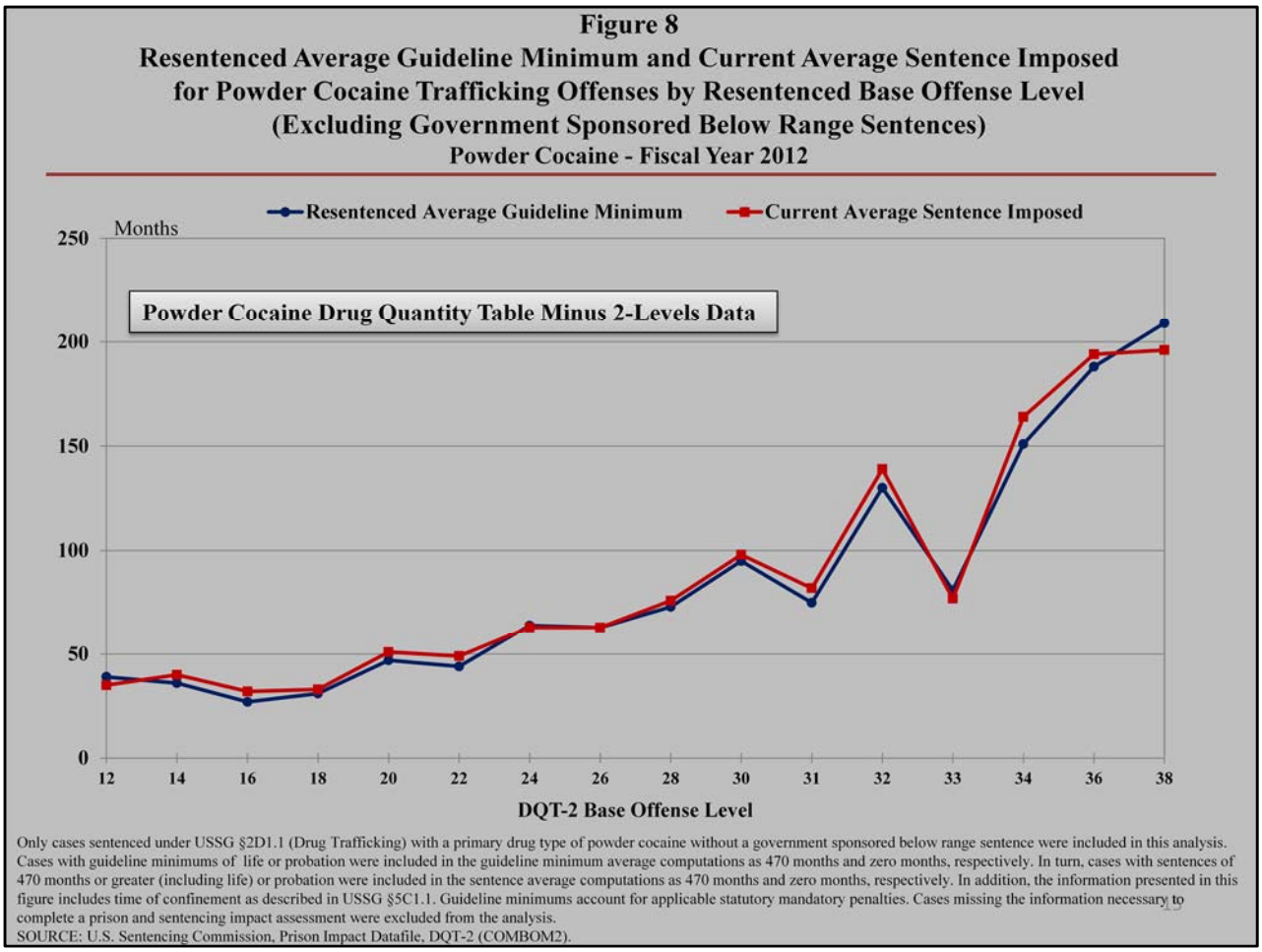

Figure 8 presents the **powder cocaine** analysis using the proposed Drug Quantity Table.

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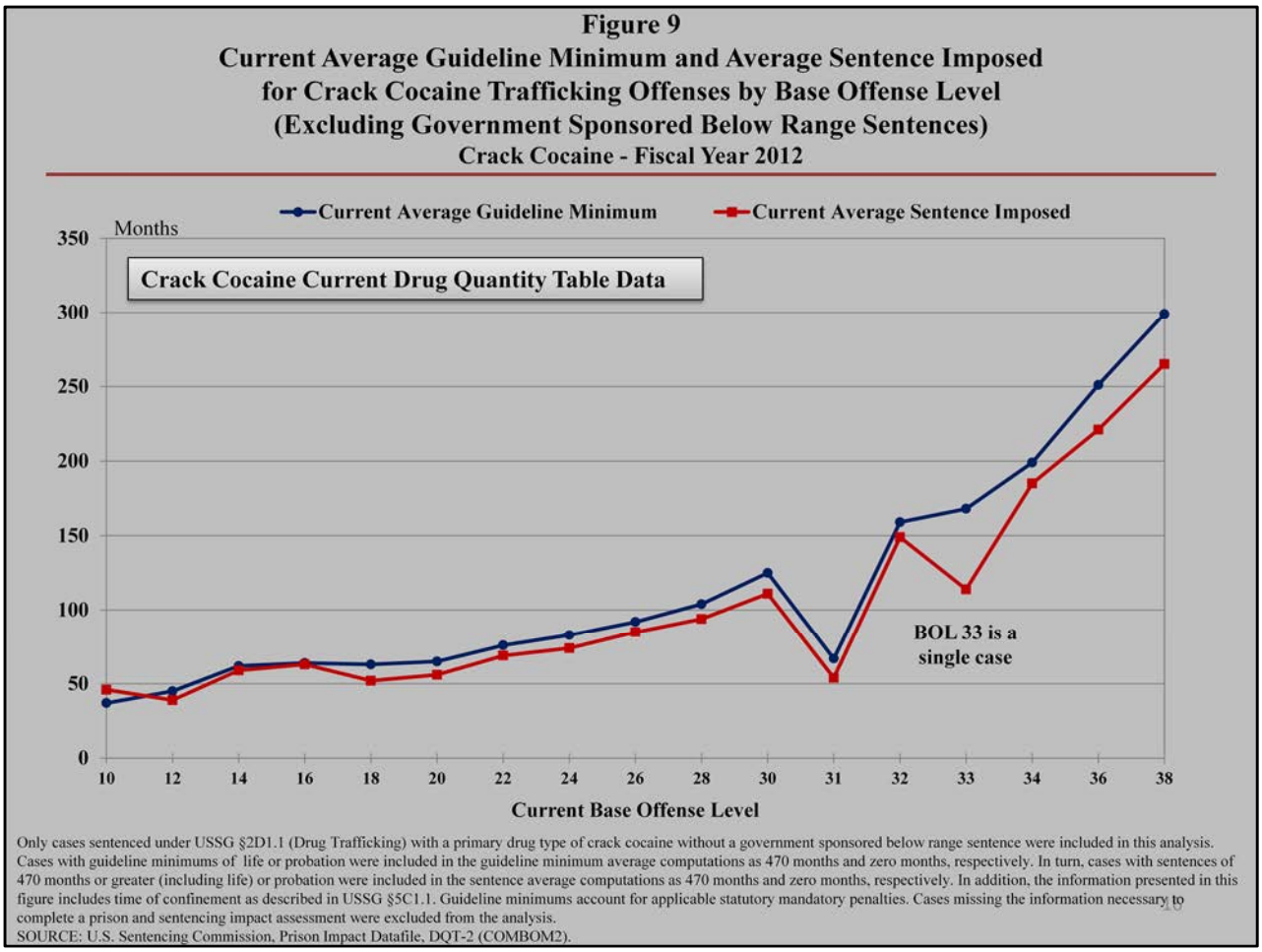

Figure 9 presents this analysis on **crack cocaine** cases using the current Drug Quantity Table.

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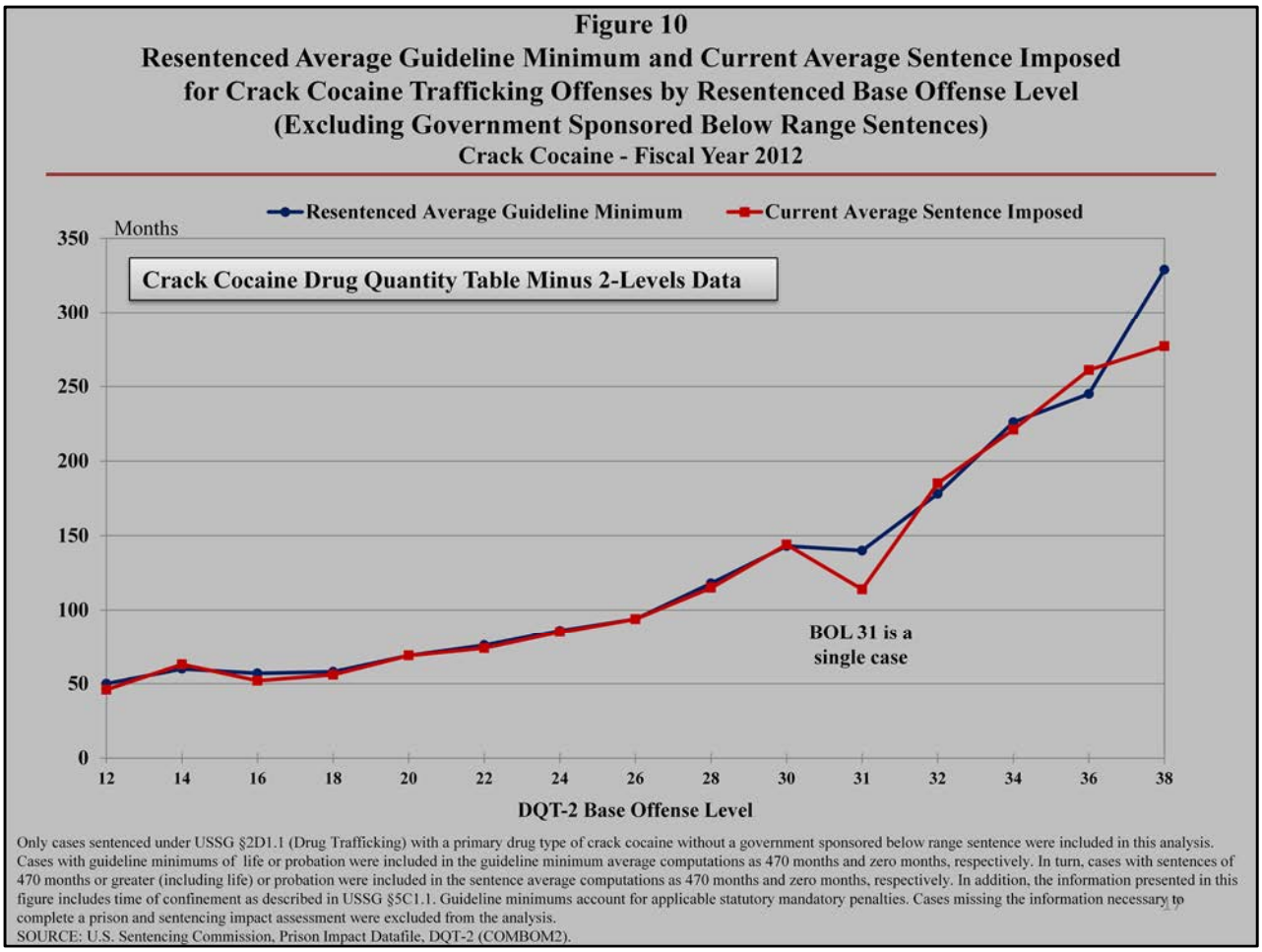

Figure 10 presents the **crack cocaine** analysis using the proposed Drug Quantity Table.

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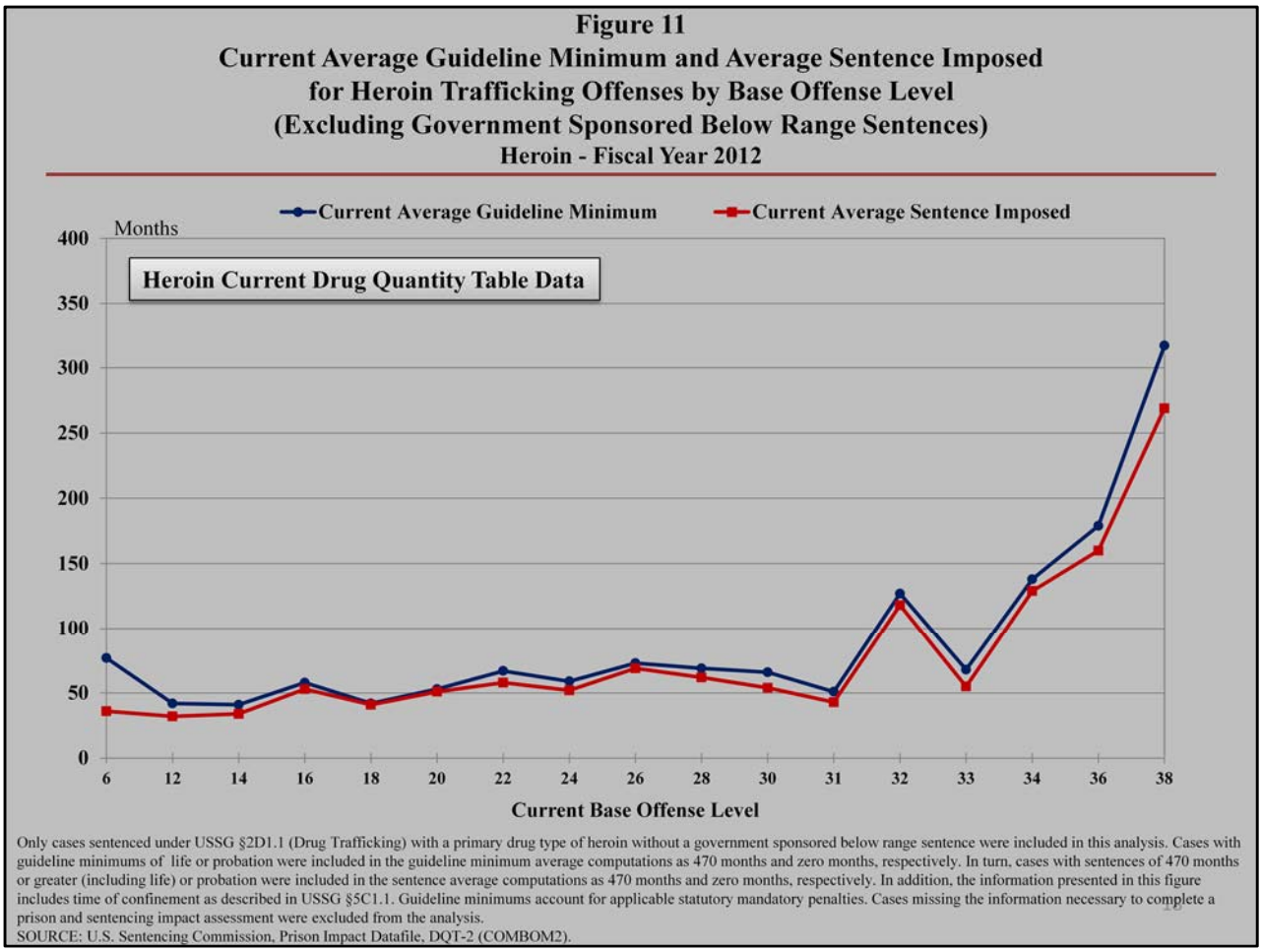

Figure 11 presents this analysis on **heroin** cases using the current Drug Quantity Table.

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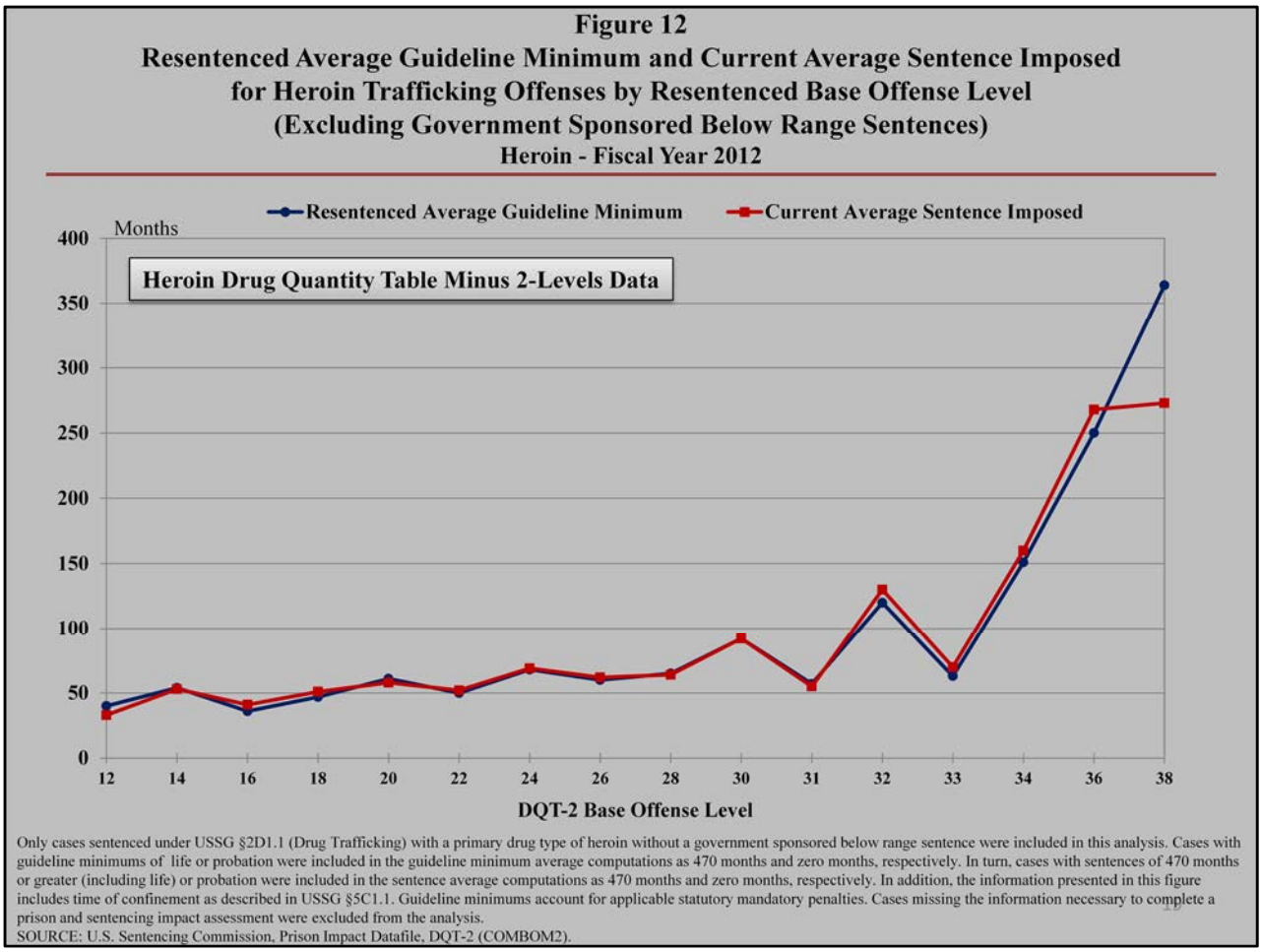

Figure 12 presents the **heroin** analysis using the proposed Drug Quantity Table.

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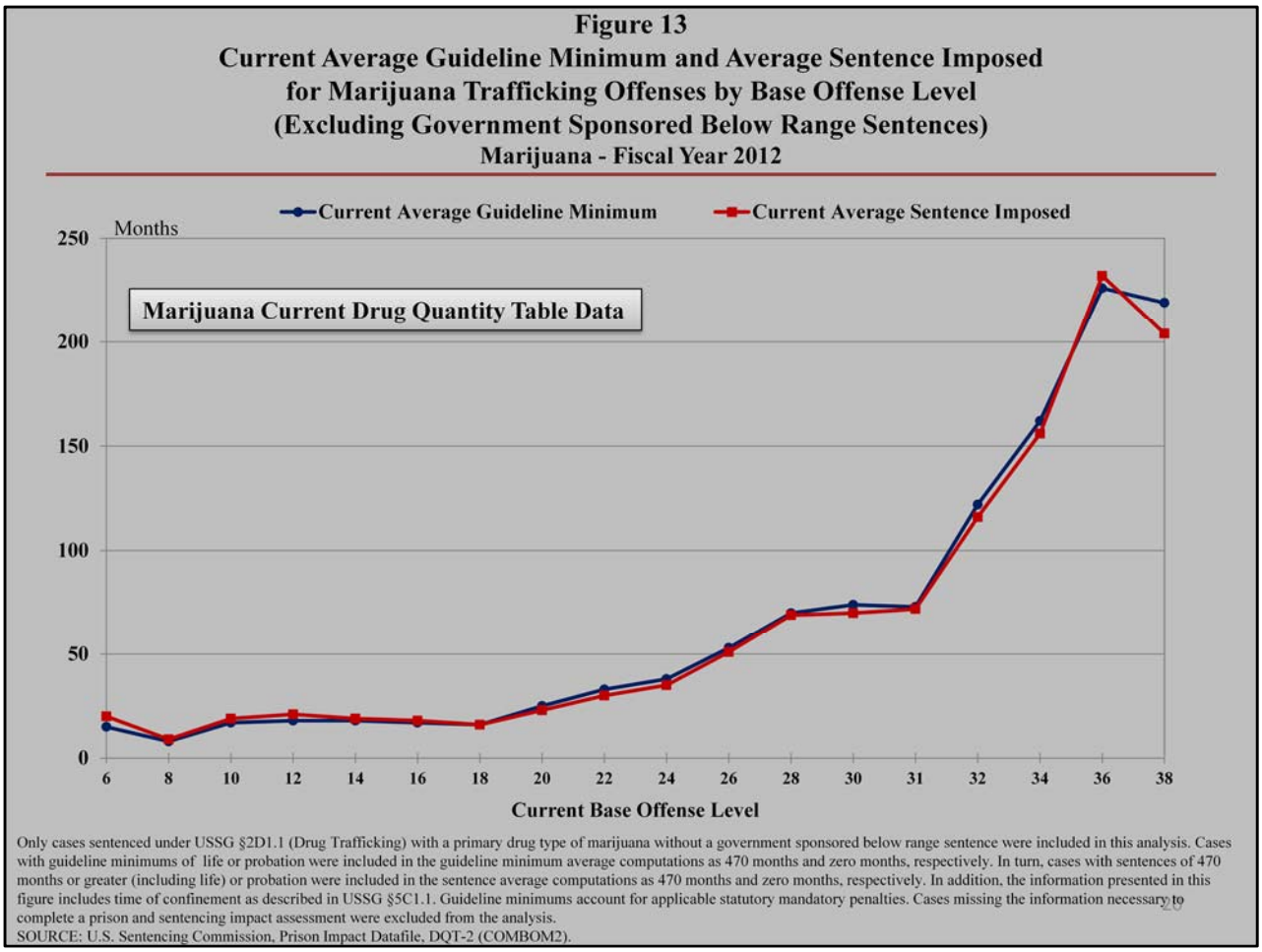

Figure 13 presents this analysis on **marijuana** cases using the current Drug Quantity Table.

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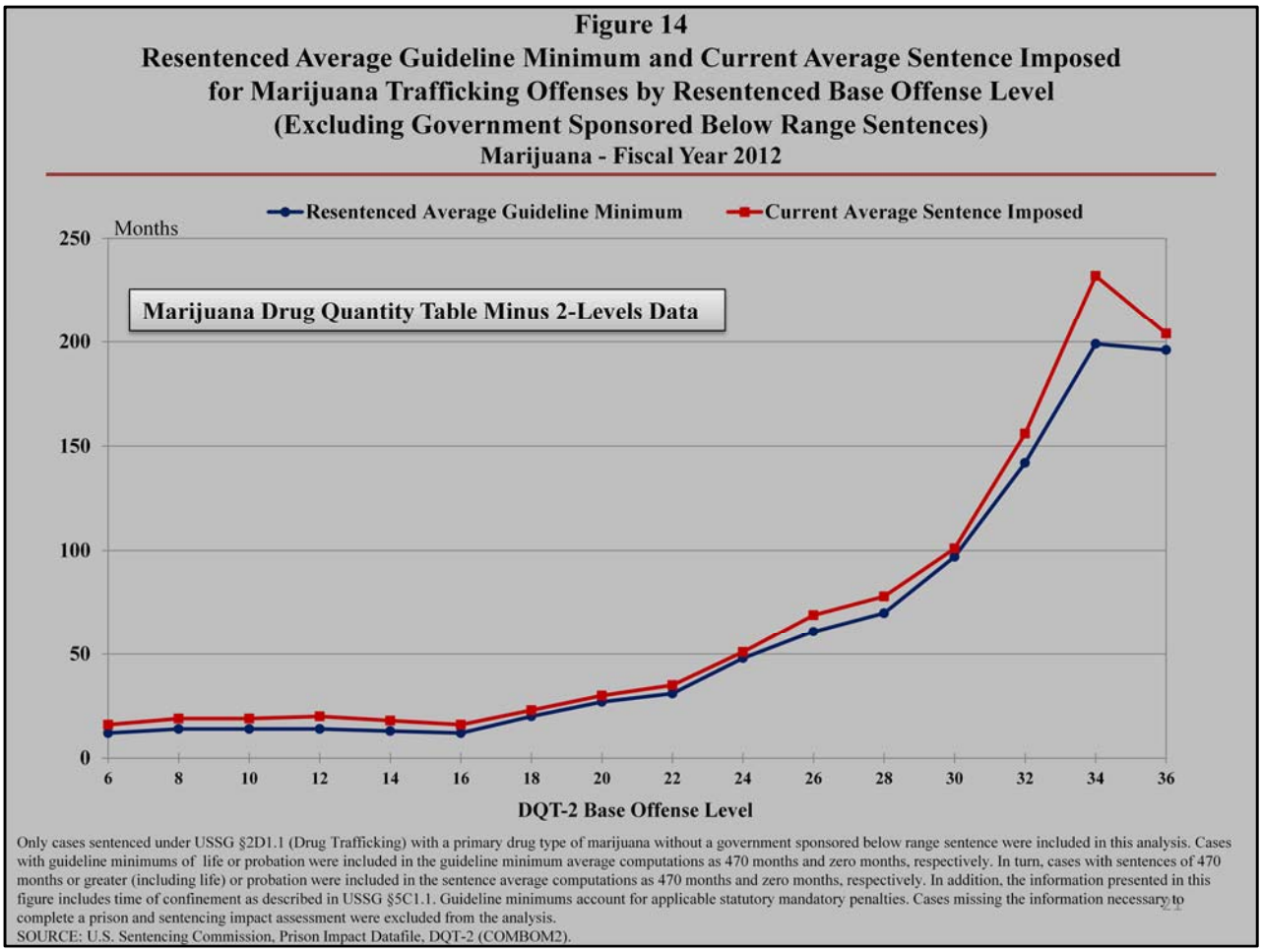

Figure 14 presents the **marijuana** analysis using the proposed Drug Quantity Table.

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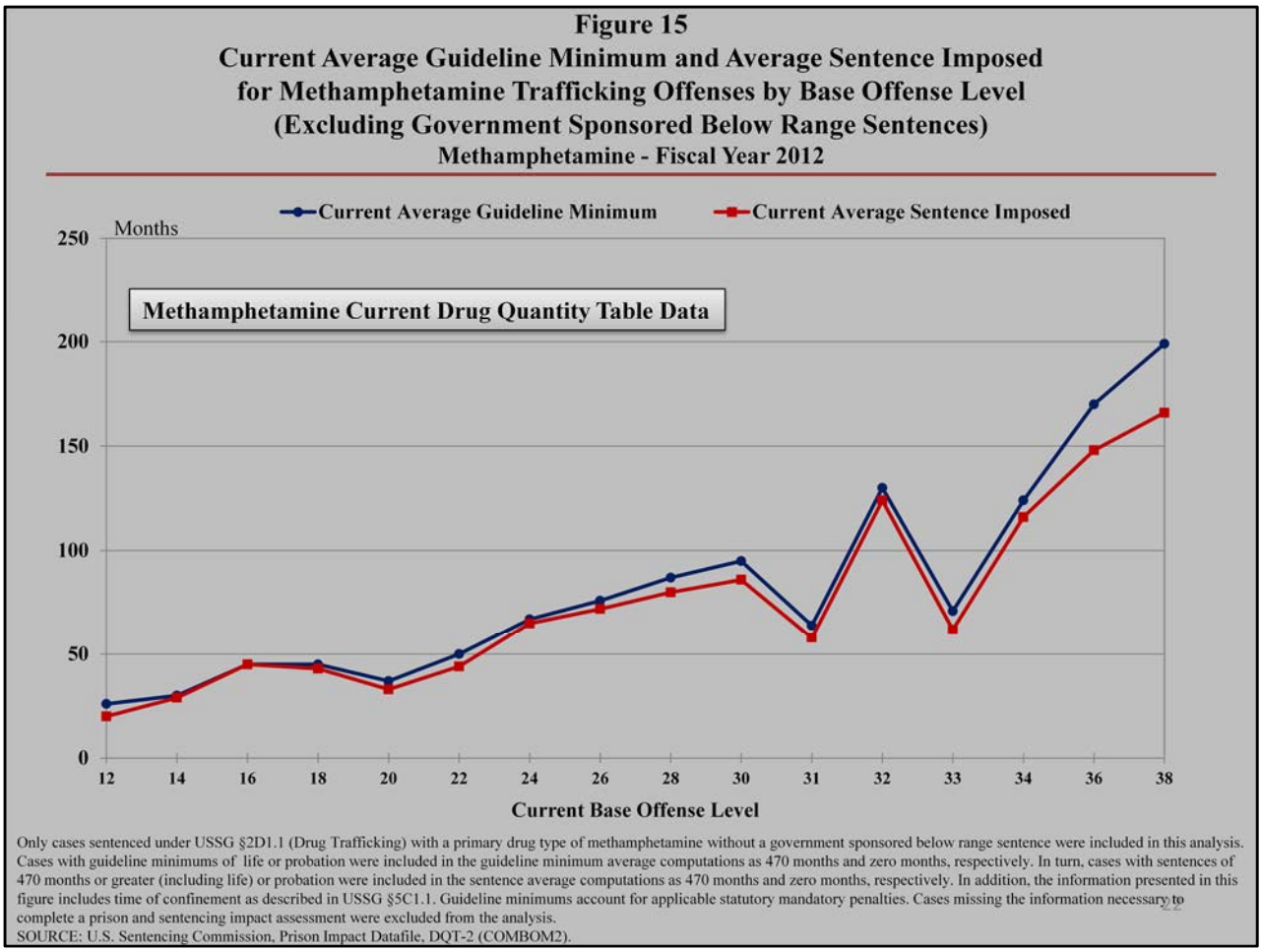

Figure 15 presents this analysis on **methamphetamine** cases using the current Drug Quantity Table.

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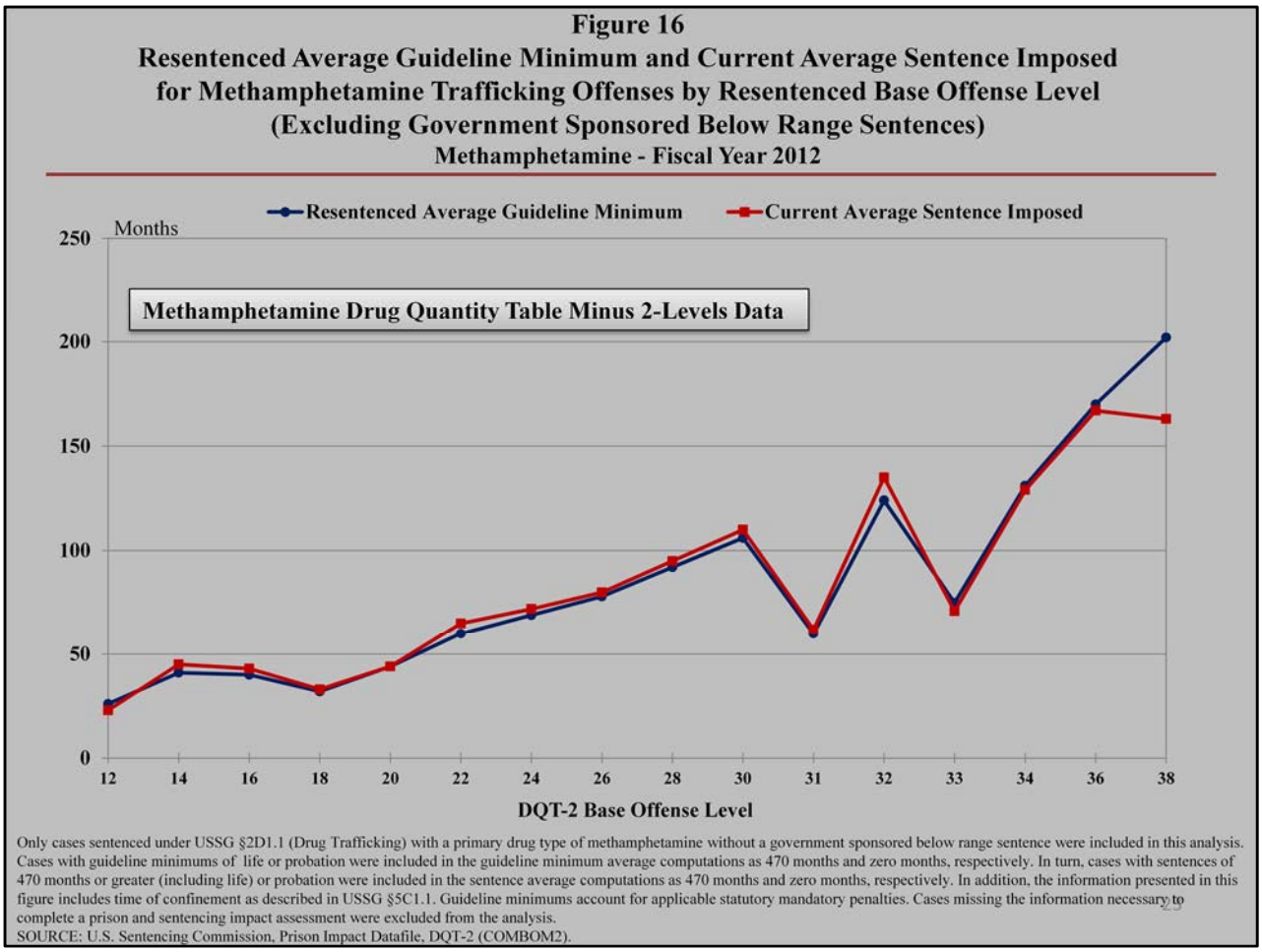

Figure 16 presents the **methamphetamine** analysis using the proposed Drug Quantity Table.

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Estimated Effect on Sentencing and Incarceration of Decreasing the Drug Quantity Table by Two Levels

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Table 5
Estimated Effect on Sentencing and Incarceration of Decreasing the Drug Quantity Table by Two Levels
FY2012 Cases

Change in Sentences Imposed

Total Cases[1]	Number Affected[2]	Percent Affected	Current Average Sentence for Affected Cases	New Average Sentence for Affected Cases	Number of Months Change	Percent Change
24,968	17,457	69.9	62	51	-11	-17.7

Change in Sentences Served

Change in years of incarceration served for offenders sentenced in a single fiscal year[3]

1st Year	2nd Year	3rd Year	4th Year	5th Year	10th Year	15th Year	Total[4]
-894	-1,083	-1,667	-1,281	-1,625	-634	-256	-13,938

Change in total BOP Population in Future Years[5]

1st Year After Effective Date	2nd Year After Effective Date	3rd Year After Effective Date	4th Year After Effective Date	5th Year After Effective Date
-894	-1,977	-3,644	-4,925	-6,550

[1]**Total Cases** are those with a particular sentencing factor being analyzed.
[2]**Affected Cases** are those in which the sentence is estimated to change as a result of the sentencing factor being analyzed. Not all cases will change as a result of the application of the sentencing factor being analyzed.
[3]This table represents the number of prison beds saved each year by a cohort of offenders sentenced in a single year.
[4]This is the total number of prison beds that will be saved when all offenders who were sentenced in the same year are ultimately released from prison.
[5]This is the annual number of prison beds saved as ongoing cohorts of offenders enter the Bureau of Prisons who have been sentenced under the changed guideline.
SOURCE: U.S. Sentencing Commission Prison and Sentencing Impact Assessment Model, FY2012 datafile.

Table 5 presents an analysis using the Commission Prison Impact Model. Since its inception, the Commission has used this analysis as part of its fact finding during the amendment process to estimate the effect of proposed guideline changes to the federal prison system. This computer model generally uses sentencing data from the previous fiscal year and recalculates sentences based on the proposed changes. The results of the analysis reducing the Drug Quantity Table by two levels are presented here.

Of the 24,968 drug trafficking offenders for whom the Commission had sufficient information to perform the analysis, 17,457 offenders, or 69.9 percent are estimated to be affected by this amendment. The current average sentence for these 17,457 offenders is 62 months. Under this amendment, we estimate that the average sentence would be reduced to 51 months. This is an average 11 months difference, or a 17.7 percent reduction

The **Change in Years of Incarceration Served for Offenders in a Single Fiscal Year** presents the savings that will eventually accrue from a single cohort of offenders after they have all served their prison sentence, That is, if the fiscal year 2012 drug trafficking offenders had been sentenced under the proposed amendment, by the time the last fiscal year 2012 offender is released from prison, we estimate that under this amendment, the federal Bureau of Prisons would have saved 13,938 prison beds.

The **Change in Total BOP Population in Future Years** presents our estimate of the yearly bed savings from the proposed amendment as successive cohorts of drug trafficking offenders are sentenced. One year after implementation, the Bureau of Prison would save 894 beds. Two years after implementation, the savings would be 1,977 beds, and so on. Each of these successive cohorts would ultimately save the estimated 13,938 prison beds - however this holds true only as long as our assumptions are supported about the composition of federal drug trafficking offenders. If there is a change in characteristics of these offenders, then the estimates no longer hold.

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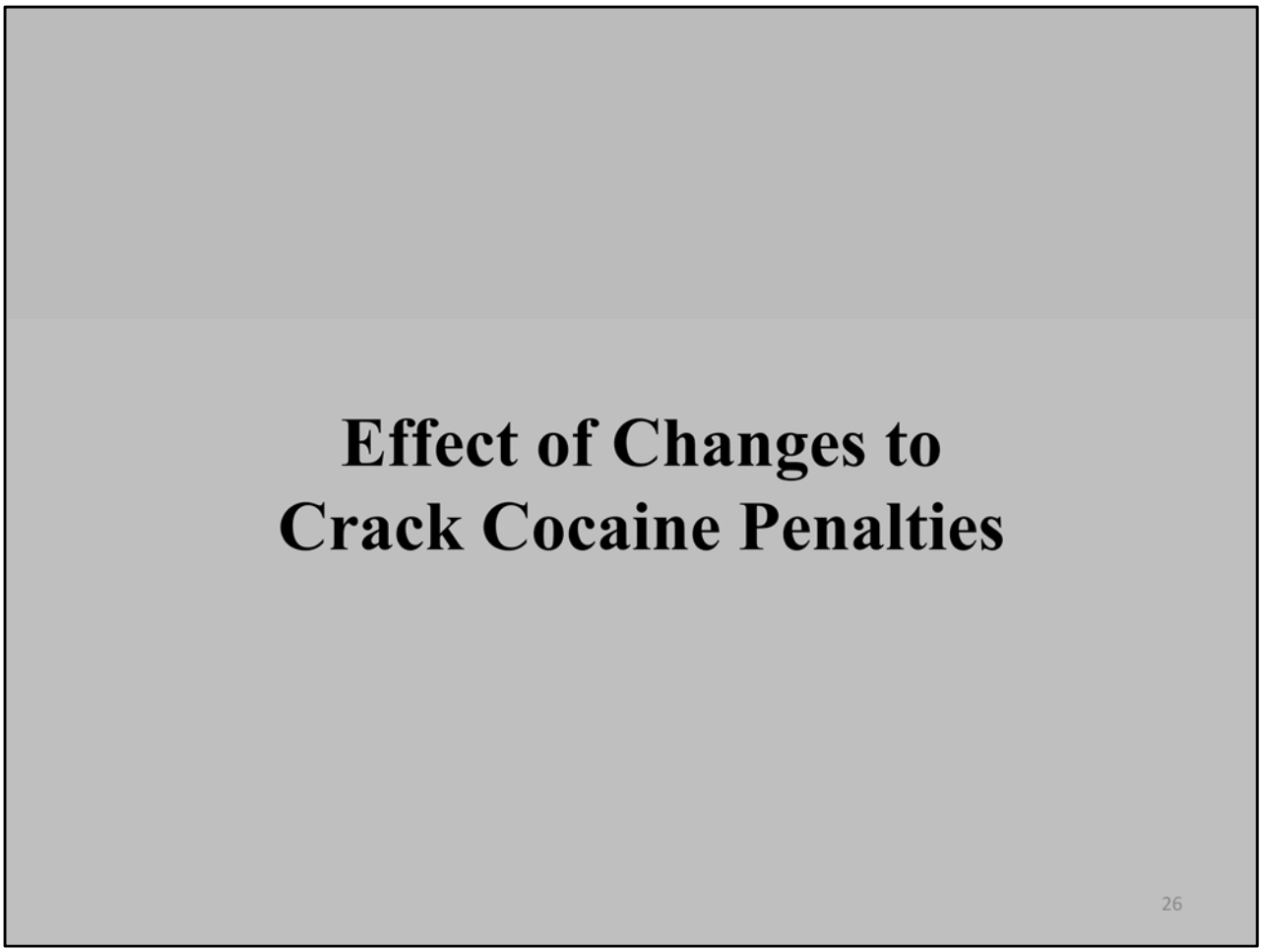

Figure 17 and Table 6 which follow present an analysis following the Commission's reduction of crack cocaine penalties in 2007

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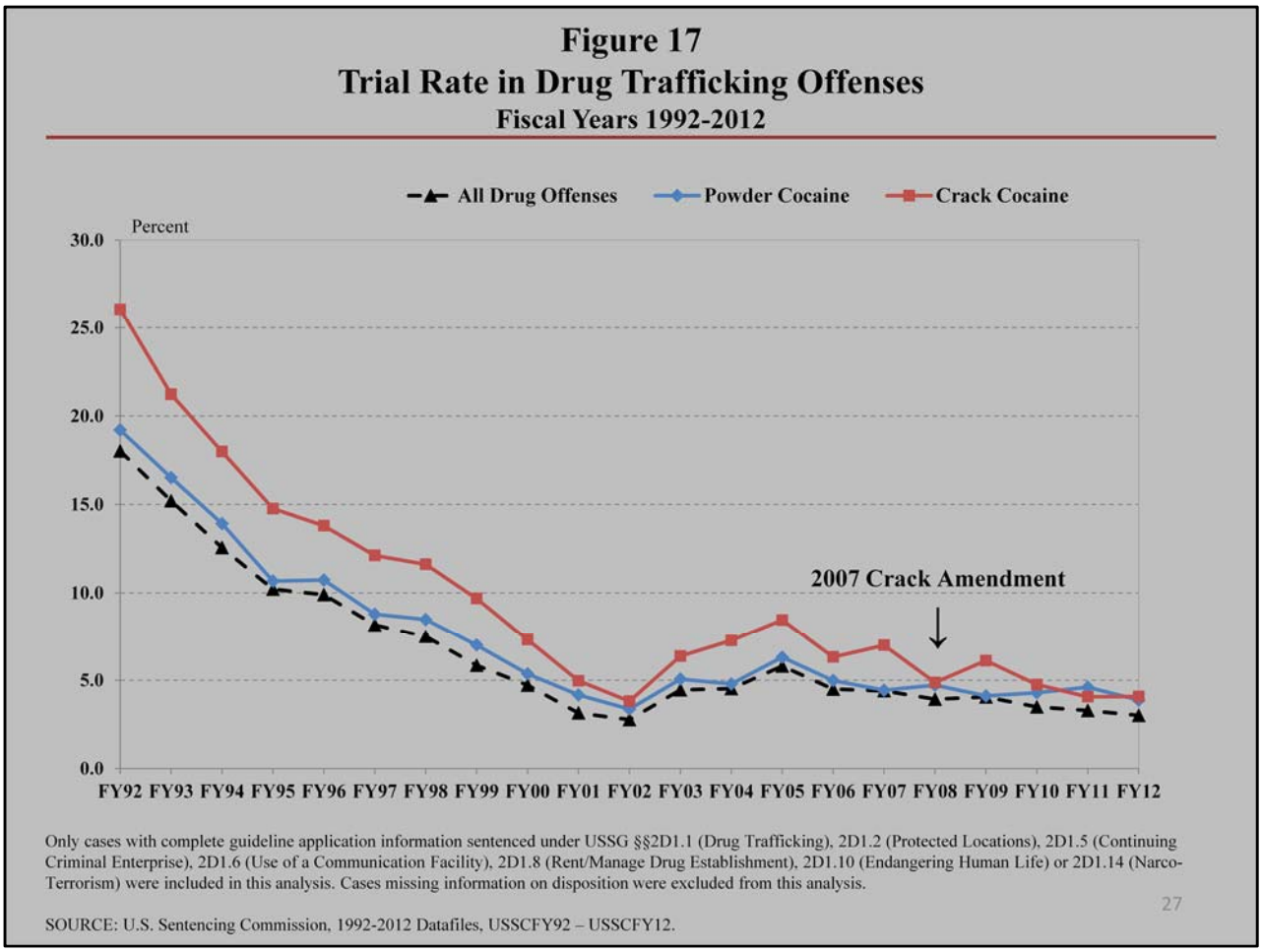

Figure 17 presents the trend in the trial rate for all drug trafficking offenders, the trial rate of powder cocaine offenders and the trial rate of crack cocaine offenders over time.

This figure demonstrates that the amendment had no impact on the trial rate among crack cocaine offenders.

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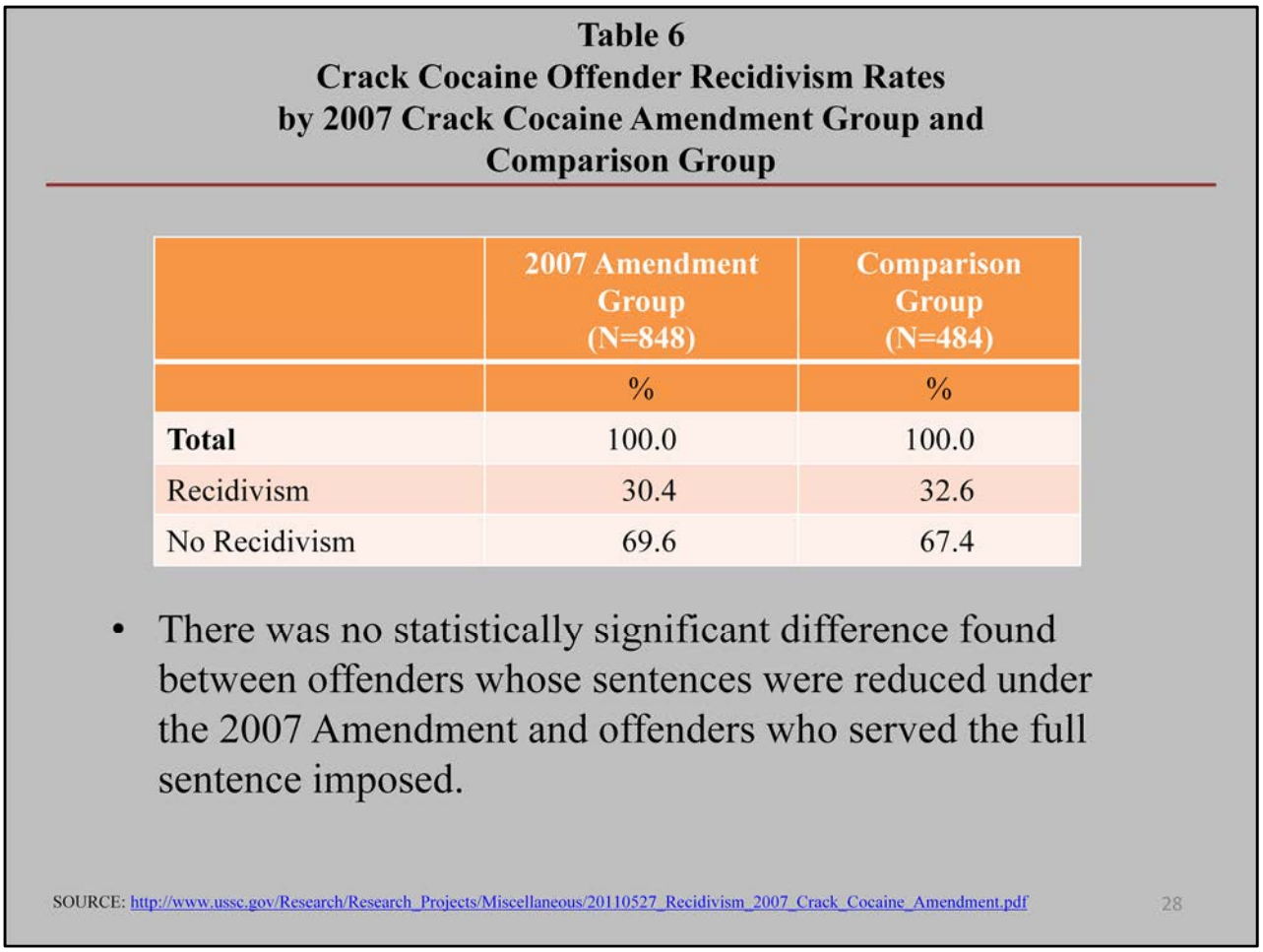

Table 6
Crack Cocaine Offender Recidivism Rates by 2007 Crack Cocaine Amendment Group and Comparison Group

	2007 Amendment Group (N=848)	Comparison Group (N=484)
	%	%
Total	100.0	100.0
Recidivism	30.4	32.6
No Recidivism	69.6	67.4

- There was no statistically significant difference found between offenders whose sentences were reduced under the 2007 Amendment and offenders who served the full sentence imposed.

SOURCE: http://www.ussc.gov/Research/Research_Projects/Miscellaneous/20110527_Recidivism_2007_Crack_Cocaine_Amendment.pdf

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Table 6 provides the results of a recidivism analysis conduced by the Commission. The Commission followed offenders who had benefitted from the reduced crack cocaine penalties for two years after their release from prison. They then compared the recidivism experience of these offenders with a comparable group released in the year prior to the amendment who had served their full original sentence.

The rates of recidivism are comparable such that there is no statistically significant difference between them.

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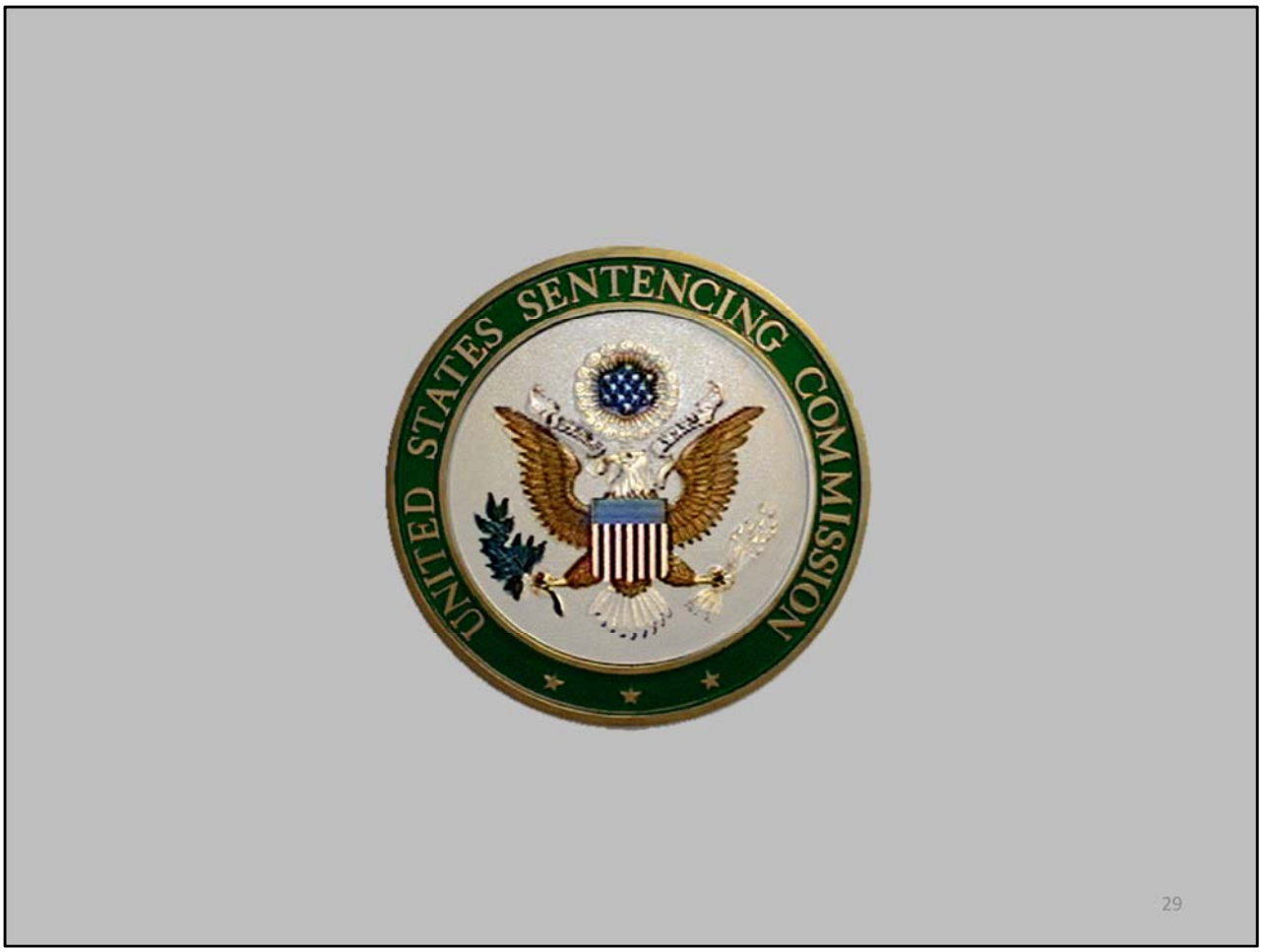

Submit public comment on this and other proposed amendments
by e-mailing us at: **public_comment@ussc.gov**
Comments are due by ***March 18, 2014.***

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