

ANALYSIS OF UNITED STATES SENTENCING COMMISSION DRUG DATA

A. INTRODUCTION

This chapter updates much of the data presented in Chapter 7 of the 1995 Commission Report. The data analysis that follows supports four major conclusions:

- The majority of powder cocaine offenses and crack cocaine offenses did not involve aggravating conduct considered by many to be most egregious (*e.g.*, weapon involvement, bodily injury resulting from violence, and distribution to protected persons or in protected locations).
- The proportion of cases involving aggravated conduct generally has declined for both powder cocaine and crack cocaine offenses since 1995.
- Certain aggravating factors occurred more often in crack cocaine cases than in powder cocaine cases, but these factors still occurred in only a minority of cases.
- The majority of crack cocaine and powder cocaine offenders performed low-level trafficking functions.

This section includes an analysis of trends in offense conduct and offender characteristics and how these trends have contributed to an increasing sentencing gap between powder cocaine and crack cocaine offenders from 1992 to 2000. (In other words, the difference between the average sentences imposed for powder cocaine and crack cocaine offenders has increased since 1992.) The data in this section are derived from the Commission's monitoring database and special Commission coding and analysis projects that were undertaken to provide a more comprehensive profile of federal cocaine offenders, their offense conduct, and sentencing outcomes.¹⁰¹ A detailed explanation of the methodology appears in Appendix C.

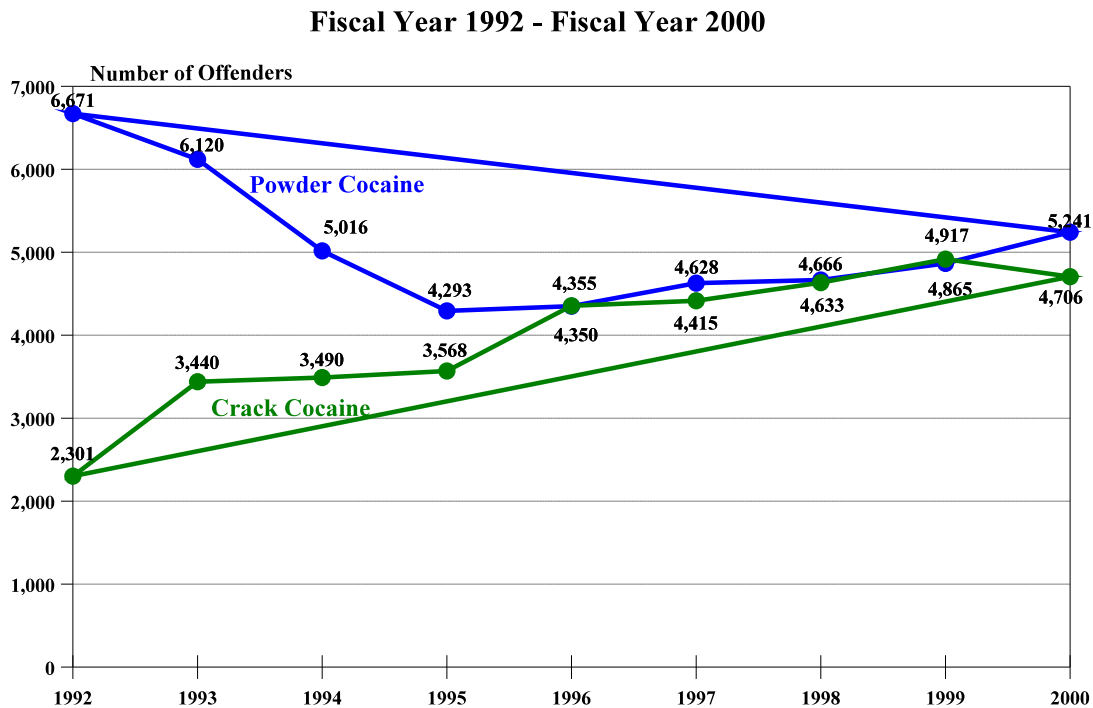
B. BACKGROUND

Powder cocaine and crack cocaine cases combined have accounted historically for about half of the federally sentenced drug trafficking cases, approximately 9,000 cases each year. In 1992, powder cocaine cases comprised 74 percent (6,671) of all cocaine cases and crack cocaine

¹⁰¹ The Commission datafiles are from fiscal years 1992 through 2000. The special coding projects produced two datafiles, referred to as the 1995 and 2000 drug samples.

cases accounted for 26 percent (2,301) of all cocaine cases.¹⁰² However, by 1996 approximately half of cocaine cases were powder cocaine cases (4,355) and half were crack cocaine cases (4,350). (Fig.1.)¹⁰³

Figure 1
Trend in Number of Federal Powder Cocaine and
Crack Cocaine Offenders



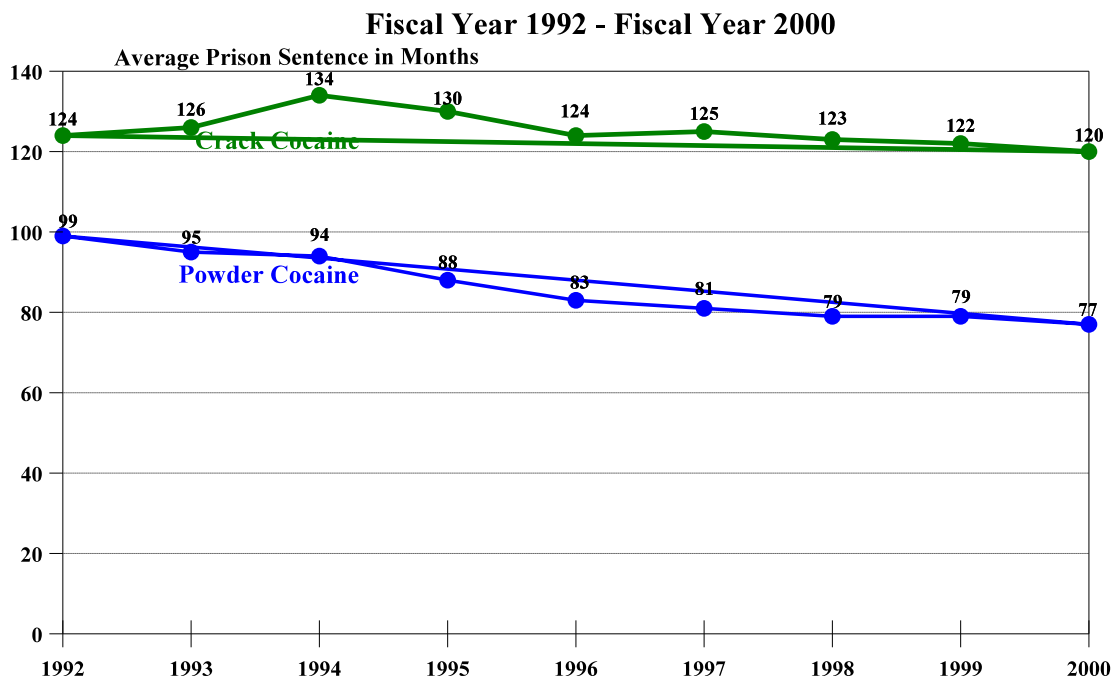
SOURCE: U. S. Sentencing Commission, 1992-2000 Datafiles, USSCFY92-USSCFY00.

¹⁰² The Commission’s monitoring data began to distinguish cases by drug type in 1992.

¹⁰³ The figure includes powder cocaine and crack cocaine cases sentenced under the primary drug trafficking guideline (USSG §2D1.1) only, and excludes drug offenses sentenced under the guidelines for other drug offenses.

Federal crack cocaine offenders consistently have received significantly longer sentences than powder cocaine offenders, and this difference has increased since 1992. Figure 2 shows the trend in average prison sentences imposed for powder cocaine and crack cocaine offenders over the last nine fiscal years (1992 through 2000).¹⁰⁴ Average sentences for crack cocaine offenders remained relatively stable during that period (124 months in 1992 and 120 months in 2000), while average sentences for powder cocaine offenders declined from 99 months to 77 months. As explained in more detail below, the changes in average sentences reflect, among other things, changes in the median drug quantities involved, occurrence of certain aggravating factors, the impact of certain changes in statutory and guideline sentencing policy (*e.g.*, the “safety valve”), and the criminal history of offenders.

Figure 2
Trend in Prison Sentences for Powder Cocaine and Crack Cocaine Offenders

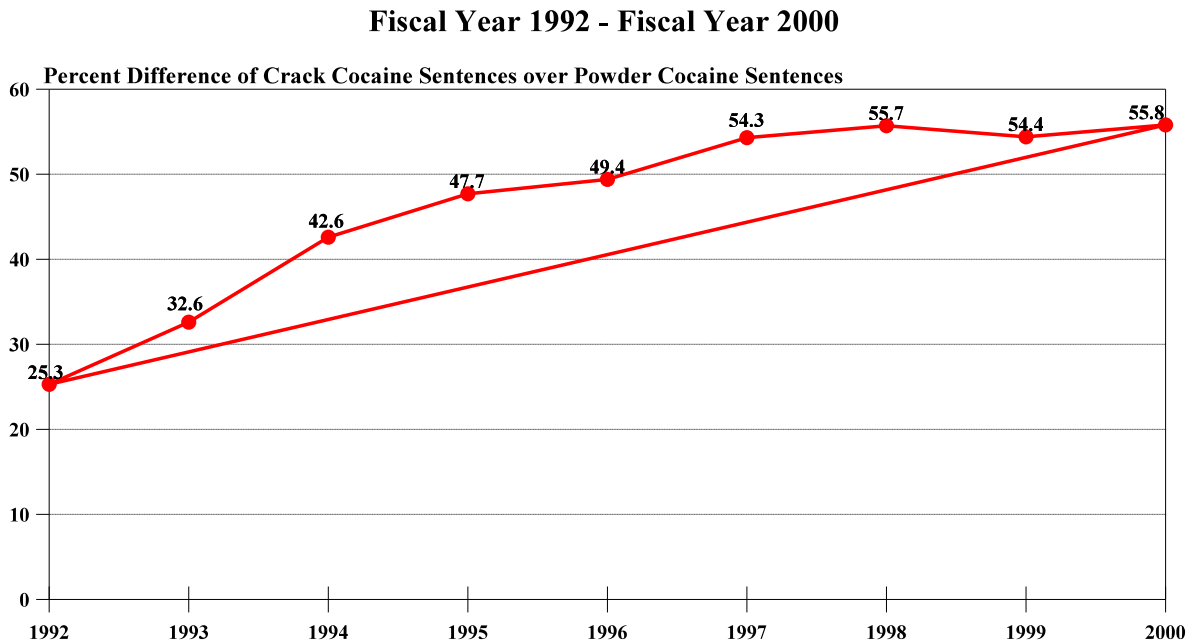


SOURCE: U. S. Sentencing Commission, 1992-2000 Datafiles, MONFY92-USSCFY00.

¹⁰⁴ For this analysis, fiscal year refers to the federal fiscal year. For example, fiscal year 1992 began on October 1, 1991 and ended on September 30, 1992.

Figure 3 uses the sentencing trend data from Figure 2 and displays the percent difference between powder cocaine sentences and crack cocaine sentences for the same period. The increasing gap between powder cocaine sentences and crack cocaine sentences is evident, with crack cocaine sentences 24.8 percent higher than powder cocaine sentences in 1992, and increasing to 55.8 percent higher than powder cocaine sentences in 2000.

Figure 3
Trend in Proportional Differences Between
Average Powder Cocaine and Crack Cocaine Sentences



SOURCE: U. S. Sentencing Commission, 1992-2000 Datafiles, MONFY92-USSCFY00.

C. OFFENSE CHARACTERISTIC TRENDS

1. Offender Function

Using actual cases sentenced in 1995 and 2000, a special drug offense analysis conducted by the Commission assessed the function performed by drug offenders as part of the offense.¹⁰⁵ Offender function refers to the trafficking function performed by the offender in the drug distribution scheme (*e.g.*, supervisor, street-level dealer, carrier) and provides a measure of culpability based on the offender's role in the offense, independent of drug quantity. Offenders higher in the drug distribution chain generally are thought to be more culpable based on their greater responsibilities and higher levels of authority. Offender function categories generally represent a continuum of severity and are presented for powder cocaine offenses and crack cocaine offenses, respectively. The more serious functions appear on the left in Figures 4 and 5, and the less serious functions appear on the right.¹⁰⁶

Three major conclusions may be drawn from the offender function data:

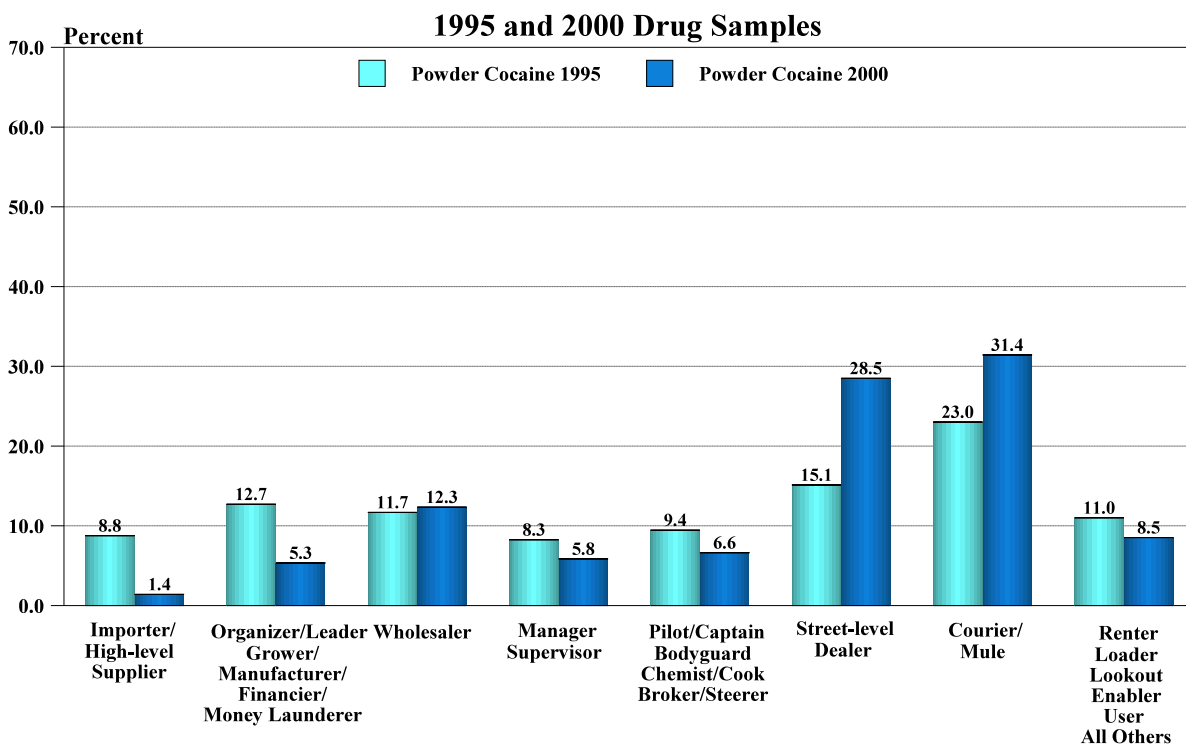
- The majority of federal cocaine offenders generally perform lower level functions.
- The concentration of offenders at lower levels has increased since 1995.
- The dominance of lower level offenders is particularly pronounced among crack cocaine offenders, two-thirds of whom were street-level dealers in 2000.

¹⁰⁵ The most serious function performed by the offender was determined from the narrative in the Offense Conduct section of the Presentence Report using the definitions that appear in Appendix C, table C1, at C4. The original 21 categories have been combined into eight categories to facilitate analysis and presentation.

¹⁰⁶ The renter/lookout/enabler category includes a number of heterogeneous functions at the lowest culpability levels. Because of the variations within this category, some anomalous findings occur.

In 1995, street-level dealers (15.1%) and couriers/mules (23.0%) combined to account for more than one-third (38.1%) of powder cocaine offenders. (Fig. 4.) In 2000, there was a substantial increase in the proportion of powder cocaine offenders in both categories, with street-level dealers (28.5%) and couriers/mules (31.4%) comprising more than half (59.9%) of all sentenced powder cocaine offenders. Conversely, there were decreases in the higher level functions. The proportion of importers/high-level suppliers dropped from 8.8 percent in 1995 to 1.4 percent in 2000. Similarly, the proportion of organizers/leaders declined from 12.7 percent to 5.3 percent.

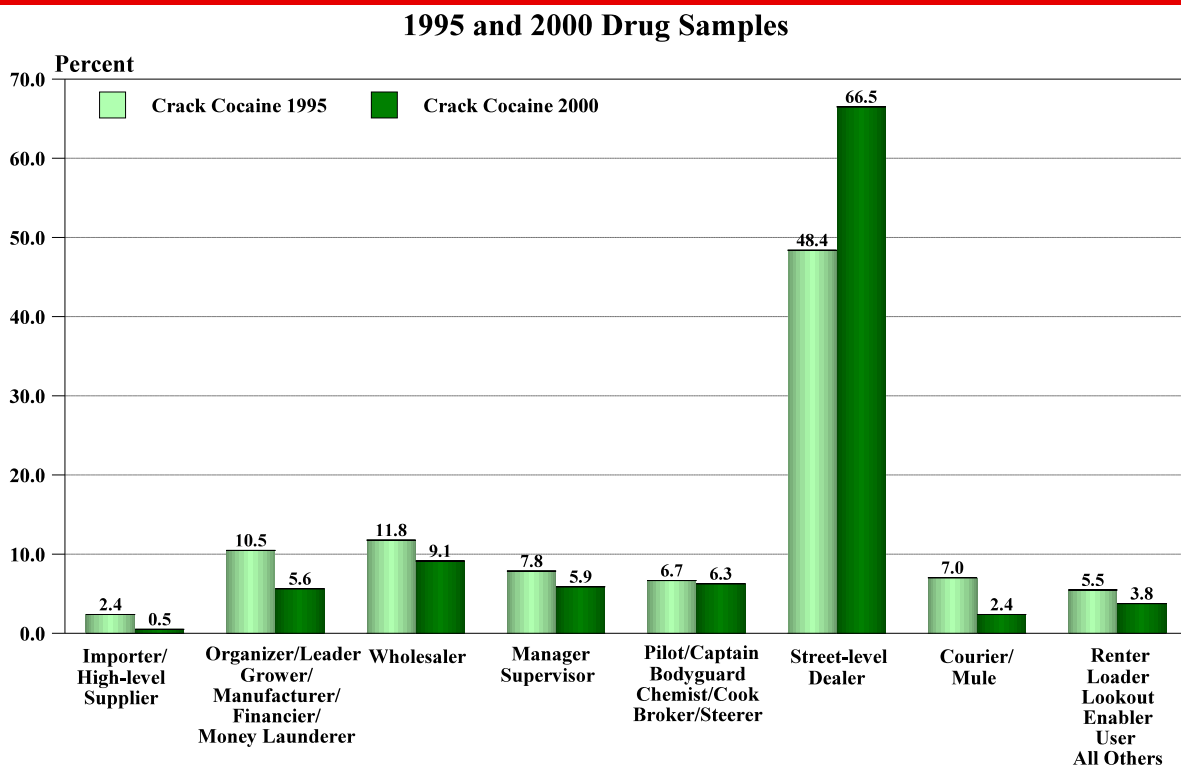
Figure 4
Offender Function in Powder Cocaine Cases



SOURCE: U. S. Sentencing Commission, 1995 and 2000 Drug Samples.

Crack cocaine offenders also were concentrated in lower level functions. In contrast to powder cocaine, however, crack cocaine offenders clustered only in the street-level dealer category. Approximately half (48.4%) of crack cocaine offenders were street-level dealers in 1995, and this proportion increased substantially to 66.5 percent by 2000. (Fig. 5.) The corresponding decrease in the proportion of higher level function offenders was less notable for crack cocaine than for powder cocaine. The greatest decrease for crack cocaine occurred in the organizer/leader category, declining from 10.5 percent to 5.6 percent between 1995 and 2000.

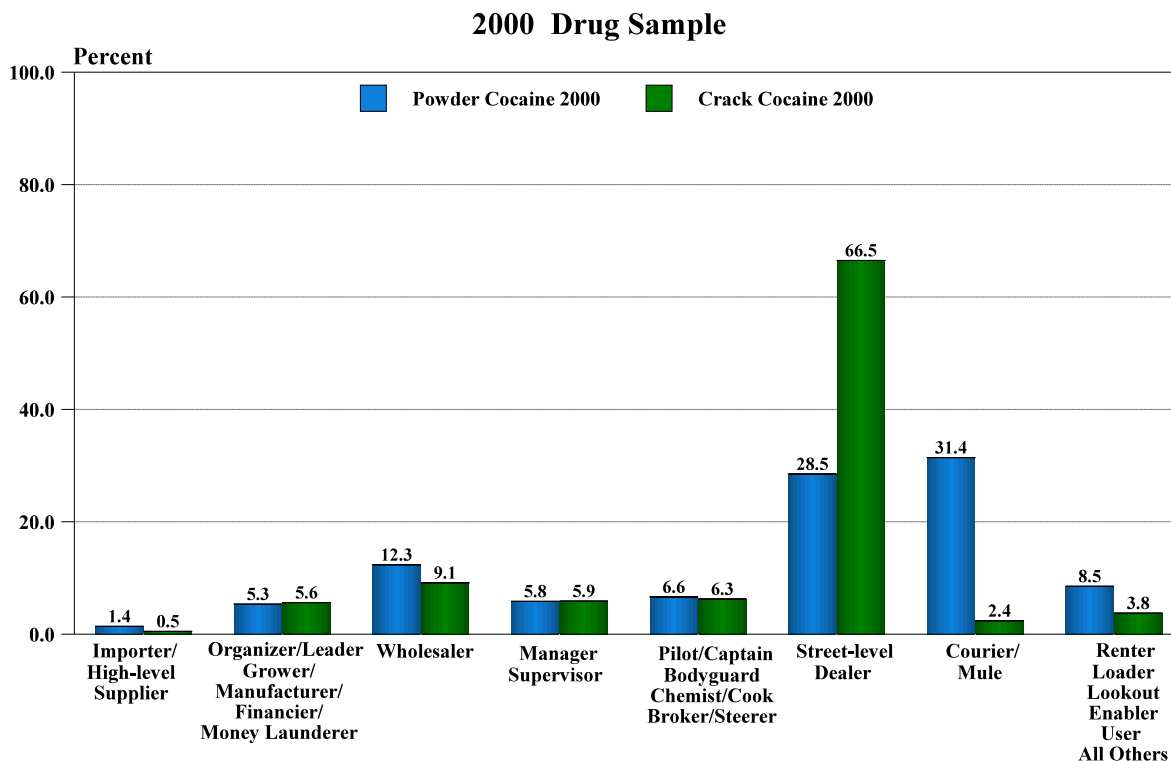
Figure 5
Offender Function in Crack Cocaine Cases



SOURCE: U. S. Sentencing Commission, 1995 and 2000 Drug Samples.

The different distributions of offender functions for powder cocaine and crack cocaine in part reflect their different trafficking patterns. Figure 6 compares offender function for powder cocaine and crack cocaine cases in the 2000 drug sample and illustrates that the largest proportion of powder cocaine offenders are couriers/mules, while the largest proportion of crack cocaine offenders are street-level dealers. The sources of the two drugs likely account for these differences. Powder cocaine is produced outside the United States and must be imported. The trafficking of powder cocaine requires couriers to bring the cocaine across the border and other mid- and low-level participants to distribute it throughout the country.¹⁰⁷ In contrast, with rare exception crack cocaine is produced and distributed domestically and the international and courier/mule component is largely absent.

Figure 6
Offender Function in Powder Cocaine and Crack Cocaine Cases



SOURCE: U. S. Sentencing Commission, 2000 Drug Sample.

¹⁰⁷ The 2000 drug sample includes data on whether offenders were involved personally with importation of the drug into the United States. Importation was much more common among couriers/mules of powder cocaine (58.3%) than couriers/mules of crack cocaine (10.5%, which represents only two of the 19 offenders classified as crack cocaine couriers/mules).

Significant increases in law enforcement efforts along United States borders since 1995 may have contributed to the increasing proportion of couriers/mules for powder cocaine. In the late 1990s the United States Customs Service implemented “Operation Hard Line” and the “Border Coordination Initiative” to increase interdiction efforts along the Southwest border. These initiatives included increasing personnel at the borders, using state-of-the-art equipment, and facilitating inter-agency cooperation.¹⁰⁸

2. Geographic Scope of Activity

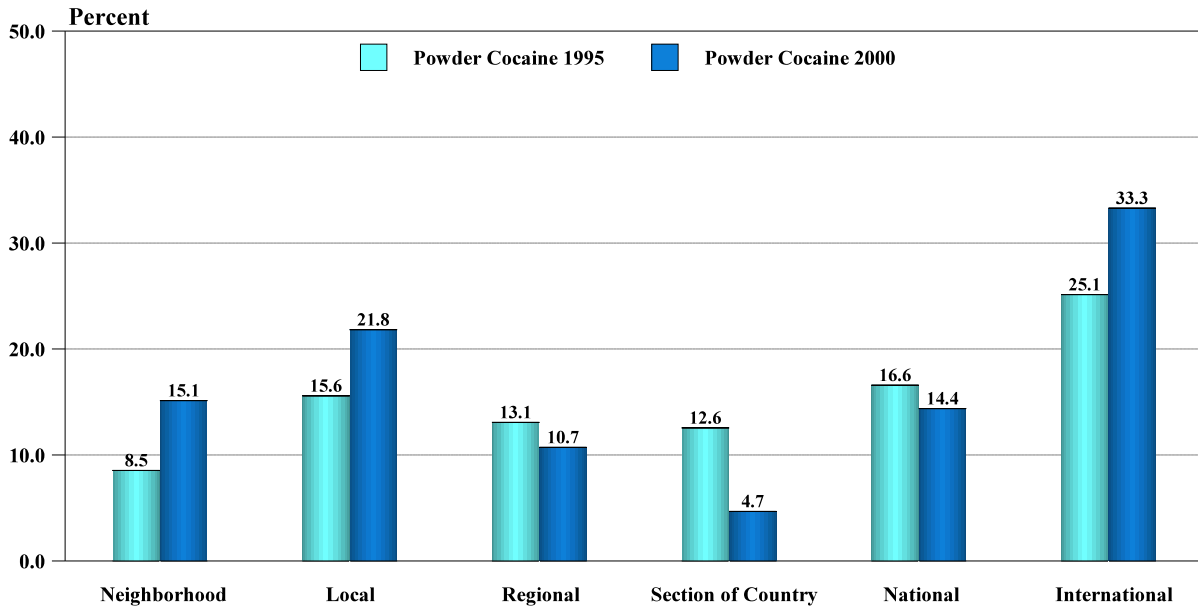
Trends in the geographic scope of powder cocaine and crack cocaine offenses also illustrate both the increased prevalence of lower level offenders and their different distribution networks. Figure 7 shows that in both years powder cocaine offenses were most common at the international level (25.1% in 1995, 33.3 % in 2000).¹⁰⁹ In contrast, the largest proportion of crack cocaine offenses occurred at the neighborhood and local levels. (Fig. 8.) Neighborhood and local level cases combined accounted for more than half (52.5 %) of the scope of activity in federal crack cocaine cases in 1995 and three-quarters of the scope of activity (75.3%) in 2000. Moreover, relatively few crack cocaine offenses were categorized as covering a section of the country or as having national scope (12.4% combined).

¹⁰⁸ The U.S. Customs Service describes Operation Hard Line as the primary focus of its drug interdiction efforts. This enforcement effort is concentrated along the entire southern tier of the United States “from Miami to San Diego and including Puerto Rico.” <http://www.customs.treas.gov/enforcem>. The initial purpose of the Border Coordination Initiative was to “create a seamless process at and between land border points of entry” Customs describes this plan as “the most effective mechanism for coordinating the law enforcement activities of agencies operating along the Southwest Border (SWB) of the United States.” <http://www.customs.gov/enforcem/bord.htm>.

¹⁰⁹ Categories of geographic activity include neighborhood (or section of a city), local (within a city or suburb), regional (within a contiguous multi-state or multi-city area), section of the country (*e.g.*, Midwest, New England), national (more than one section of the country, New York to Florida, for example), and international.

Figure 7 Scope of Geographic Activity in Powder Cocaine Offenses

1995 and 2000 Drug Samples



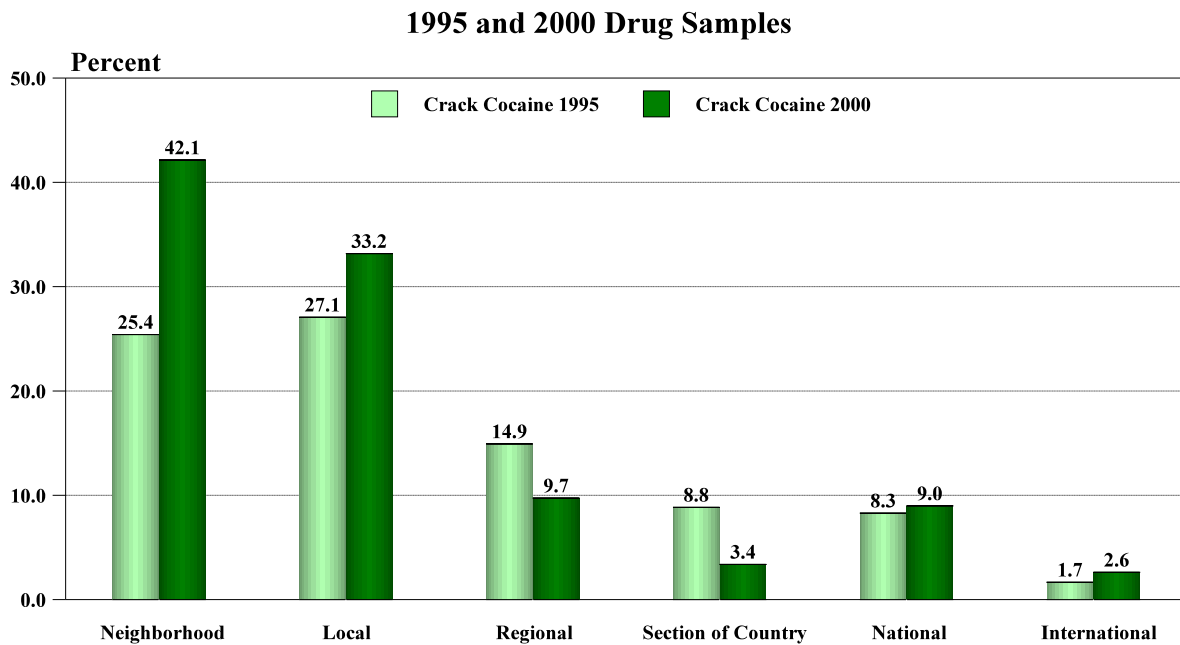
SOURCE: U. S. Sentencing Commission, 1995 and 2000 Drug Samples.

Changes in the geographic scope of offenses for both drug types between 1995 and 2000 parallel the changes in offender function previously described. Increases in powder cocaine offenses at the neighborhood (8.5% to 15.1%) and local (15.6% to 21.8%) levels, when combined, correspond to the increase in street-level dealers (15.1% to 28.5%).¹¹⁰ The increased proportion of international offenses (25.1% to 33.3%) corresponds to the increase in couriers and mules (23% to 31.4%).¹¹¹

¹¹⁰ Street-level dealers, for both drug types, are concentrated in the neighborhood or local regions. In the 2000 drug sample, for example, 32.1 percent of powder cocaine street-level dealers operated at the neighborhood level, while 38.0 percent were at the local level.

¹¹¹ The majority (60.3%) of powder cocaine offenses involving courier/mules in the 2000 drug sample were international.

Figure 8
Scope of Geographic Activity in Crack Cocaine Offenses

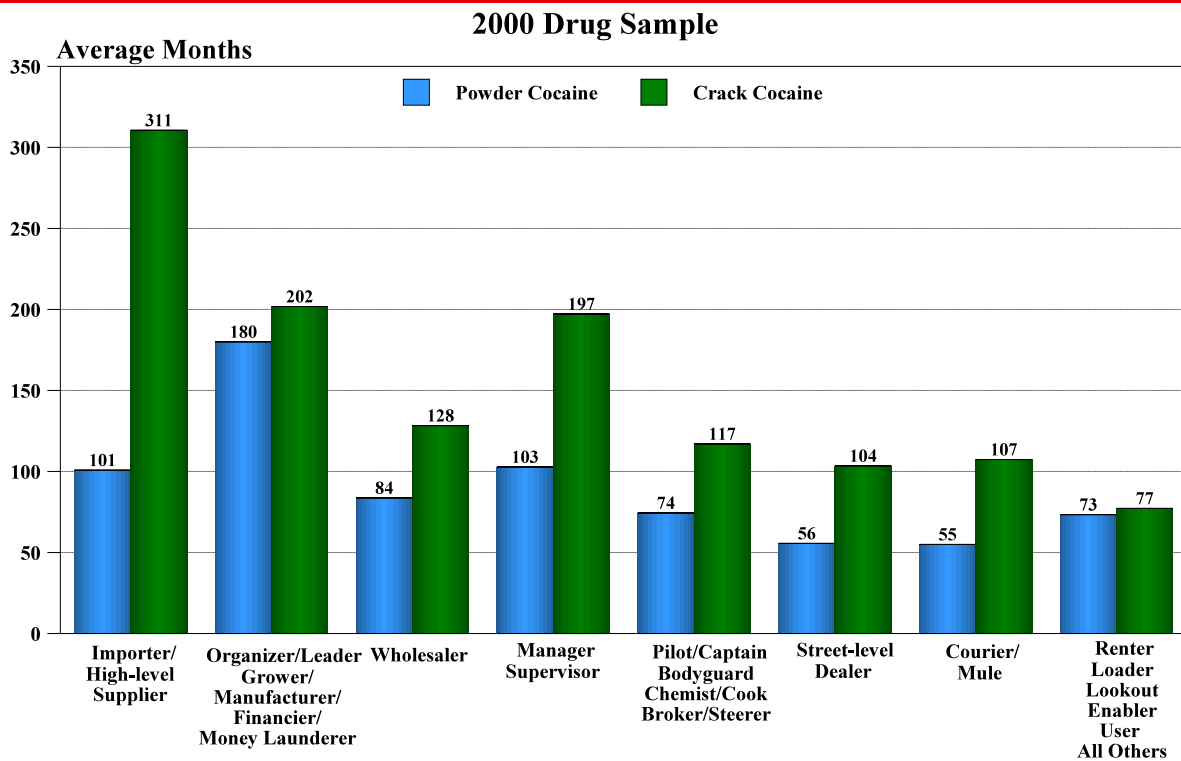


SOURCE: U. S. Sentencing Commission, 1995 and 2000 Drug Samples.

When combined, the increase in crack cocaine offenses at the neighborhood (25.4% to 42.1%) and local (27.1% to 33.2%) levels between 1995 and 2000, also parallels the increase in the proportion of street-level dealers (48.4% to 66.5%) for crack cocaine.

Assuming a relationship exists between offender function and culpability, sentence lengths by offender function would be expected to vary accordingly. Figure 9 shows the relationship between offender function and length of sentence for the 2000 drug sample. As expected, both powder cocaine and crack cocaine offenders in more serious function categories generally received longer prison sentences, and sentence lengths tended to decline with decreasing culpability levels.¹¹² Consistent with the data presented earlier, sentences for crack cocaine offenses are longer, often substantially so, than for powder cocaine offenses at every function category.

Figure 9
Average Length of Imprisonment by Offender Function in
Powder Cocaine and Crack Cocaine Cases



SOURCE: U. S. Sentencing Commission, 2000 Drug Sample.

¹¹² The relatively short average sentence for the 11 powder cocaine offenders in the importer/high-level supplier category is the result of more than half of those offenders receiving either a downward departure (9.1%) or Substantial Assistance departure (45.4%).

The relationship between offender function and sentence length, demonstrated in Figure 9, is in great part the result of three statutory and/or guideline provisions. First, to the extent that they are held accountable for larger drug quantities, the guidelines' Drug Quantity Table generally operates to punish higher level offenders more severely than lower level offenders. Second, the guidelines contain adjustments that increase or decrease sentences by up to four offense levels (an approximate 50% change), based on whether the offender had an aggravating or mitigating role in the offense.¹¹³ Third, offenders with high-level functions tend to be ineligible for the statutory/guideline "safety valve," which relieves offenders from the mandatory minimum sentences if they meet the criteria set forth in 18 U.S.C. § 3553(f) and reproduced in USSG §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases).

3. Drug Quantity

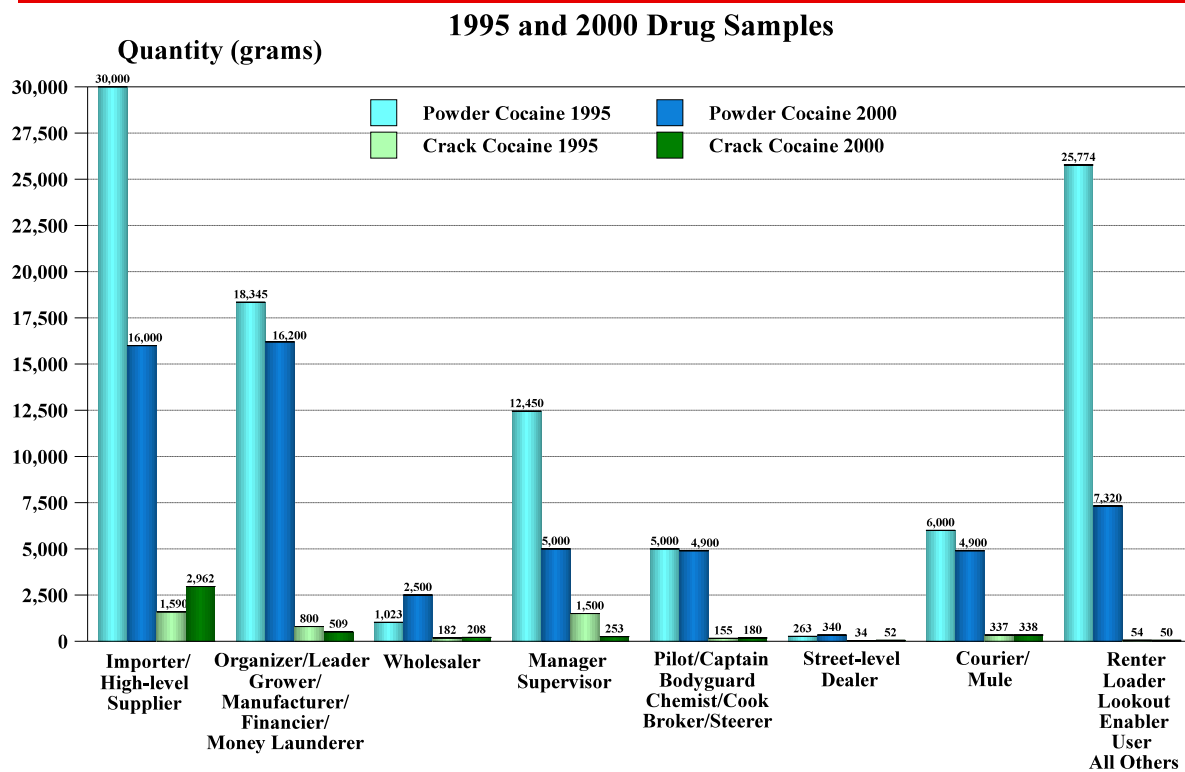
Drug quantity is the primary determinant of sentence length for drug offenders under the federal sentencing guidelines, and it varies considerably by offender function and between the two forms of cocaine.¹¹⁴ For every offender function category, crack cocaine offenders consistently were held accountable for substantially lower drug quantities than powder cocaine offenders (Fig. 10), yet received longer average sentences, often substantially longer, as shown in Figure 9.

¹¹³ See USSG §§3B1.1 and 3B1.2. Section 3B1.1 (Aggravating Role) applies if the defendant was an organizer, leader, manager, or supervisor of the criminal activity; §3B1.2 (Mitigating Role) applies if the defendant was a minimal or minor participant.

¹¹⁴ Final offense level (offense severity) and criminal history score comprise the vertical and horizontal axes of the sentencing table, respectively. Offense level values increase or decrease based on the offender's conduct, and the intersection of these calculated values determines the sentencing guideline range for the offense. Base offense levels, the starting point for calculating federal sentences for drug trafficking offenders, are based on the Drug Quantity Table in USSG §2D1.1.

As illustrated in Figure 10, decreasing drug quantities tend to correspond to decreasing culpability, as defined by offender function. For both powder cocaine and crack cocaine, the most culpable offenders (*i.e.*, importers/high-level suppliers) generally were held accountable for greater drug quantities than lower level offenders. This is an expected result given the rules of relevant conduct provided in USSG §1B1.3. Relevant conduct rules generally operate to hold leaders of drug conspiracies accountable for the (reasonably foreseeable) drug quantities distributed during the course of the conspiracy.¹¹⁵ Those offenders are not necessarily in possession of these large quantities of drugs at any given time, but they are legally responsible for them.

Figure 10
Median Drug Quantity by Offender Function in
Powder Cocaine and Crack Cocaine Cases



SOURCE: U. S. Sentencing Commission, 1995 and 2000 Drug Samples.

¹¹⁵ For a thorough discussion of Relevant Conduct, *see* USSG §1B1.3 and its accompanying commentary.

The notable exception to this pattern is powder cocaine couriers/mules.¹¹⁶ Despite their relatively lower levels of culpability in the overall drug conspiracy, as defined by function, powder cocaine couriers/mules are generally accountable for fairly large quantities of drugs. This anomaly occurs because couriers/mules typically have significant quantities of drugs in their possession at the time of arrest.¹¹⁷

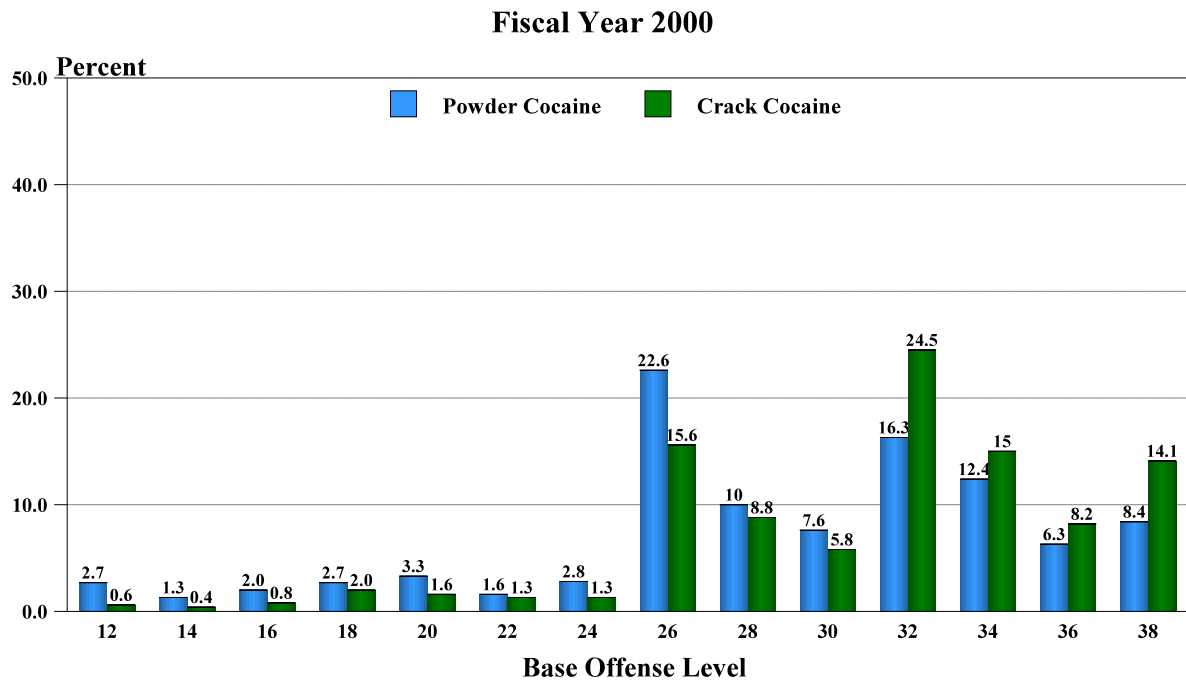
The 100-to-1 drug quantity ratio accounts for the bulk of the sentencing gap between powder cocaine and crack cocaine offenders, but the relationship between drug quantity, offense level, and offender function has contributed to the widening of that gap. Between 1995 and 2000, the amount of crack cocaine involved increased for the most prevalent crack cocaine function category (street-level dealer), resulting in a larger proportion of crack cocaine offenders receiving higher base offense levels. In contrast, the drug quantity decreased for the most prevalent powder cocaine function category (courier/mule). Specifically, the median drug quantity for street-level crack cocaine dealers (comprising the majority of crack cocaine offenders) increased by 52.9 percent, and drug quantities for the largest group of powder cocaine offenders (couriers/mules) decreased by 18 percent. As a result, the largest proportion of crack cocaine offenders (24.5%) received a base offense level of 32 (121-151 months) while the largest proportion of powder cocaine offenders (22.6%) received a base offense level of 26 (63-78 months). (Fig. 11.)¹¹⁸

¹¹⁶ There is an anomalous result for the “miscellaneous” category for powder cocaine offenders because of its heterogeneous character (renters, loaders, lookouts, enablers, users, all others). This heterogeneity prevents meaningful analysis. The drug quantities involved with the loader/off-loader category skews the median for the 2000 drug sample. The median drug amount for the loader/off-loader category alone is 41,335 grams, while the median for the remainder of the “miscellaneous” group is 3,000 grams.

¹¹⁷ In the 2000 drug sample, 49.5 percent of all powder cocaine offenders engaged in a single transaction. Seventy-seven percent of powder cocaine couriers/mules engaged in a single transaction.

¹¹⁸ Base offense levels of 26 and 32 correspond to the five and ten-year mandatory minimum penalties, respectively. As described in Chapter 1, the Drug Quantity Table offense levels are linked to the threshold quantities by the statutory mandatory minimums. As a result of the 100-to-1 drug quantity ratio between powder cocaine and crack cocaine, 100 times the amount of powder cocaine is required to produce equivalent guideline sentencing ranges for any given quantity of crack cocaine.

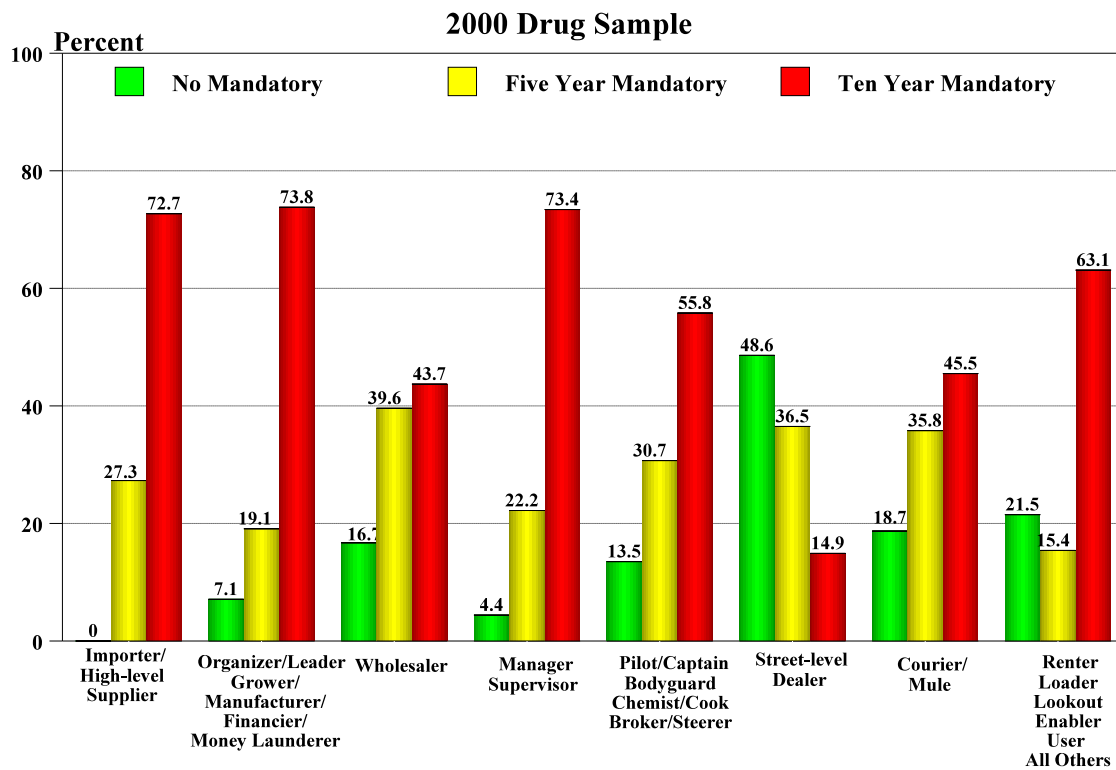
Figure 11
Distribution of Drug Guideline Base Offense Levels for
Powder Cocaine and Crack Cocaine Offenders



SOURCE: U. S. Sentencing Commission, 2000 Datafile, USSCFY2000.

The majority of cocaine offenders have drug convictions that expose them to the quantity-based five and ten-year mandatory minimum penalties.¹¹⁹ Nearly all high-level powder cocaine offenders are eligible for those penalties, but exposure to mandatory minimum penalties does not decrease substantially with offender culpability. For example, 100 percent of the highest level powder cocaine offenders (importers/high-level suppliers) faced mandatory minimum penalties, but so did nearly 80 percent of powder cocaine couriers/mules, the most prevalent offender function for powder cocaine. (Fig. 12.)¹²⁰

Figure 12
Powder Cocaine Offenders Exposed to
Drug Mandatory Minimums for Each Offender Function



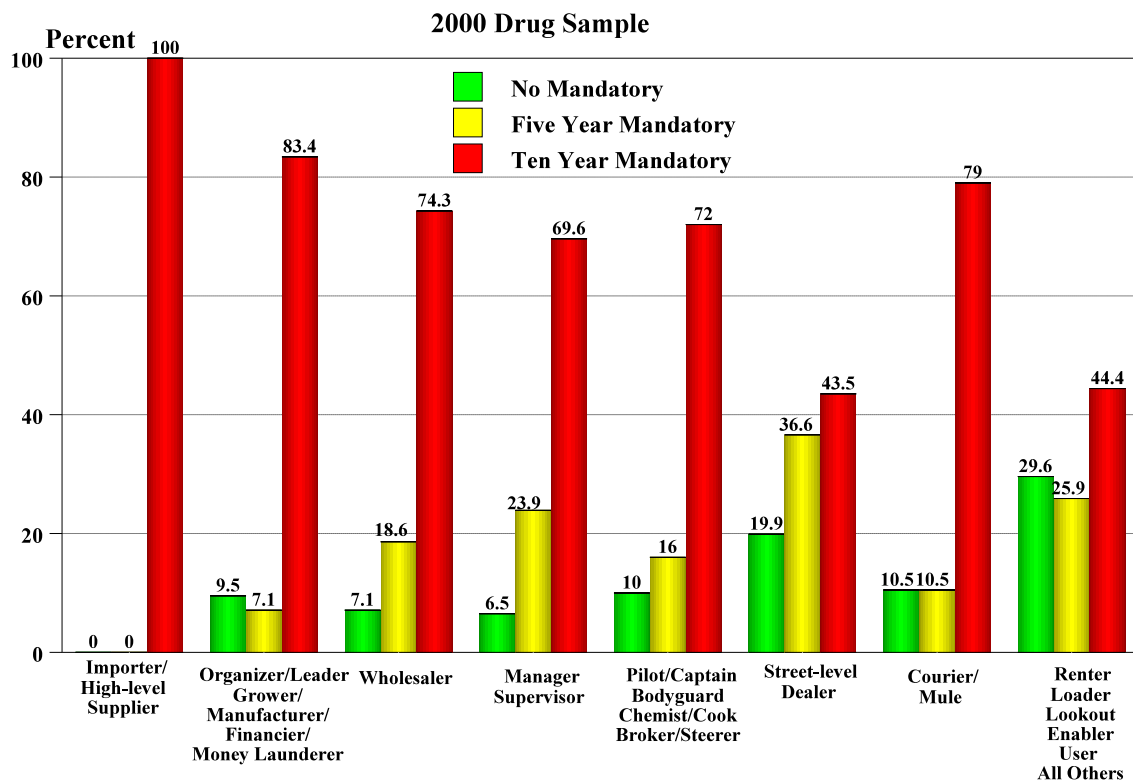
SOURCE: U. S. Sentencing Commission, 2000 Drug Sample.

¹¹⁹ In 2000, 75.8% of powder cocaine offenders and 82.2% of crack cocaine offenders had convictions that exposed them to mandatory minimum penalties of five years or more based on drug quantity. These figures do not reflect offenders who received relief from the mandatory minimum penalties via substantial assistance departures or the safety valve.

¹²⁰ Offenders eligible for mandatory terms of ten years, twenty years, or life have been combined into the ten-year category to facilitate presentation.

Similarly, among crack cocaine offenders there is little distinction across function in exposure to some mandatory minimum penalties; at least 90 percent of crack cocaine offenders in the five most culpable function categories were subject to mandatory minimum penalties. (Fig. 13.) Moreover, the majority (80.1%) of street-level dealers, the most prevalent type of crack cocaine offenders, were also subject to mandatory minimum penalties.

Figure 13
Crack Cocaine Offenders Exposed to
Drug Mandatory Minimums for Each Offender Function

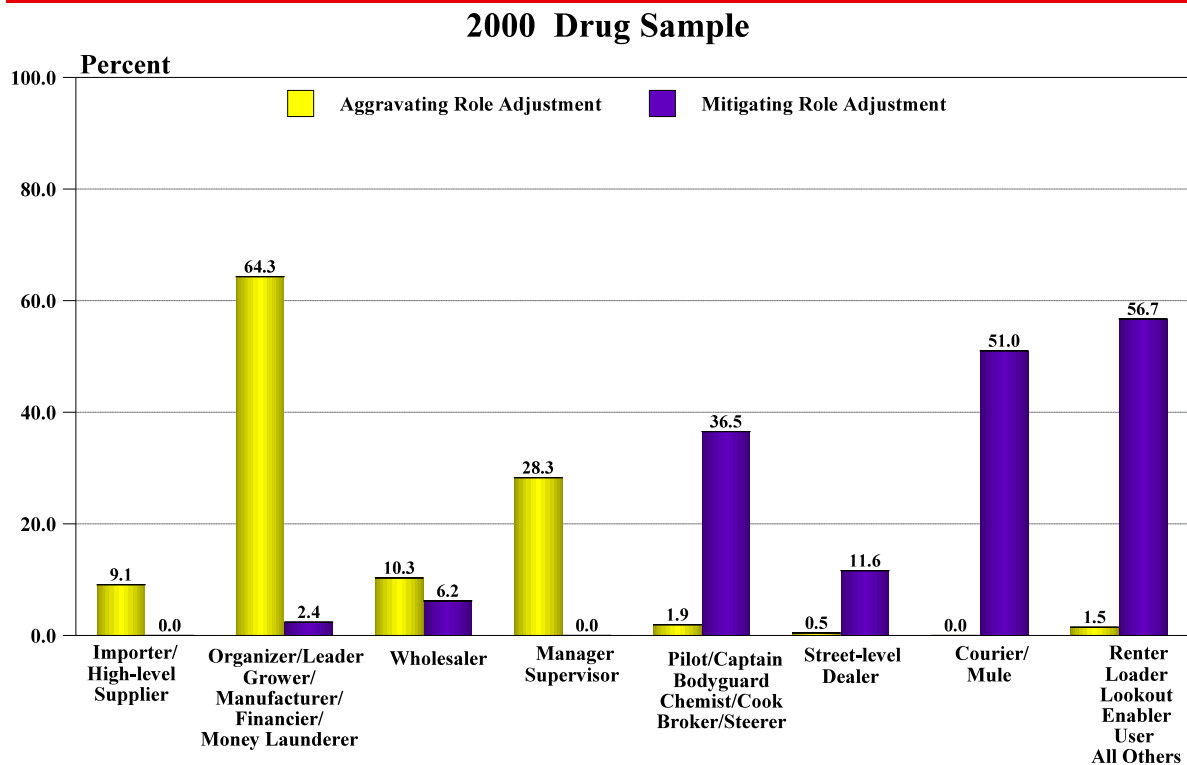


SOURCE: U. S. Sentencing Commission, 2000 Drug Sample.

4. Guideline Role Adjustments

Figures 14 and 15 show, as one would expect, that higher level powder cocaine and crack cocaine offenders are more likely to receive guideline aggravating role enhancements, and lower level offenders are more likely to receive guideline mitigating role reductions. Approximately two-thirds of organizers/leaders for both powder cocaine (64.3%) and crack cocaine (62.2%) received aggravating role enhancements in 2000, while downward adjustments for mitigating role for this group were nearly nonexistent.

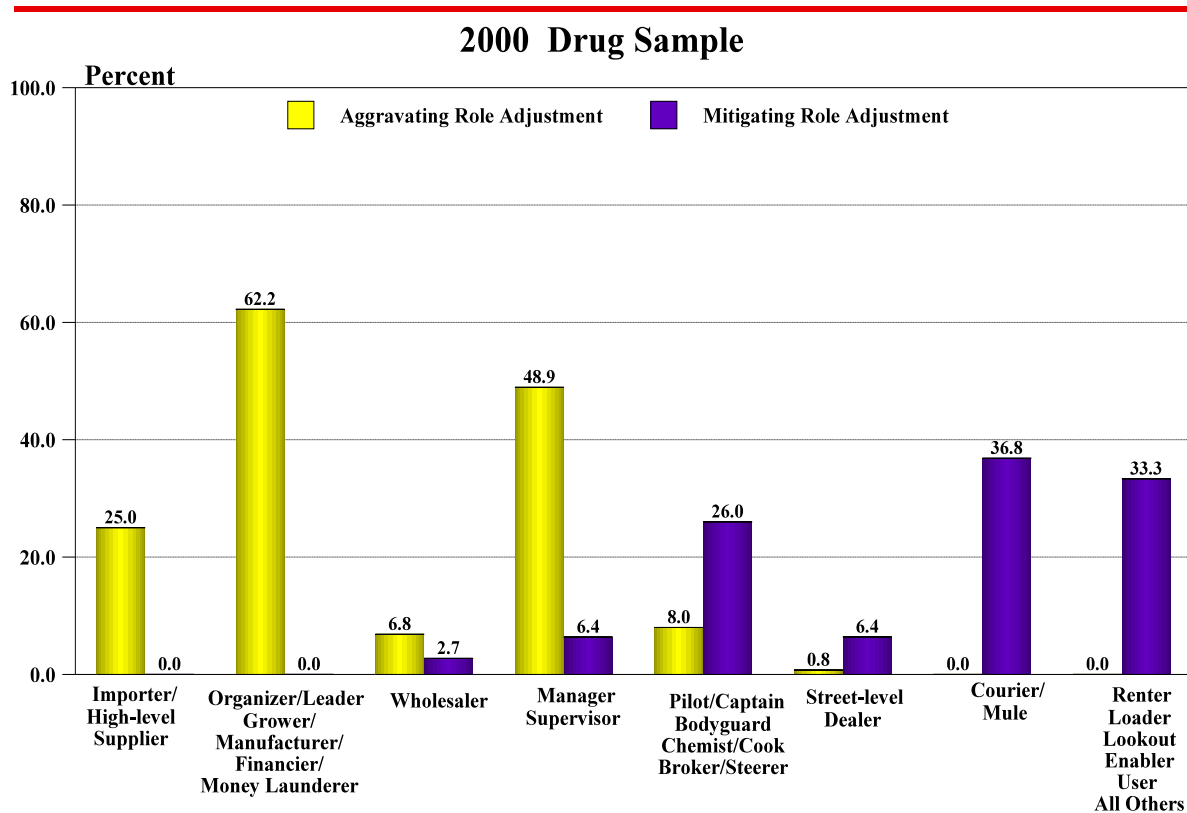
Figure 14
Guideline Role Adjustments and
Offender Function for Powder Cocaine Cases



SOURCE: U. S. Sentencing Commission, 2000 Drug Sample.

Mitigating role reductions were less evenly distributed by drug type, but lower level offenders were still more likely to receive mitigating role reductions and rarely received aggravating role enhancements. Half of lower level powder cocaine offenders (51.0% of couriers/mules) received offense level reductions for mitigating role, and about one-third of crack cocaine offenders in the courier/mule category (36.8%) received those reductions. Interestingly, relatively few street-level dealers received role adjustments (11.6% and 6.4% of street-level powder and crack cocaine offenders, respectively, received mitigating role reductions).¹²¹

Figure 15
Guideline Role Adjustments and
Offender Function for Crack Cocaine Cases



SOURCE: U. S. Sentencing Commission, 2000 Drug Sample.

¹²¹ Role adjustments also were uncommon for offenders in the wholesaler category. This function category contains a diverse group of distributors of varying drug quantities who typically have neither leadership roles nor the lowest levels of culpability.

The relationship between offender function and guideline role adjustments is relevant to the increasing sentencing gap because powder cocaine offenders receive mitigating role reductions substantially more often than crack cocaine offenders. In 1992, 16.4 percent of powder cocaine offenders received a mitigating role reduction, compared to 9.4 percent of crack cocaine offenders. In 2000, the percentage of powder cocaine offenders receiving the reduction increased to 22.3 percent largely because over half of the offenders classified as couriers or mules, a group which increased considerably since 1995, received a mitigating role reduction. Conversely, in 2000 the percentage of crack cocaine offenders receiving a mitigating role reduction declined to 8.6 percent. This coincides with the substantial increase in street-level dealers in 2000, a group that is unlikely to receive any role adjustment.¹²²

5. Other Aggravating Factors

The majority of powder cocaine and crack cocaine offenses do not involve certain other aggravating factors thought by many to be particularly egregious conduct and the prevalence of those factors for both forms of the drug has declined since 1995. These factors occur in only a minority of crack cocaine cases, although they occur more often in those cases than in powder cocaine cases.

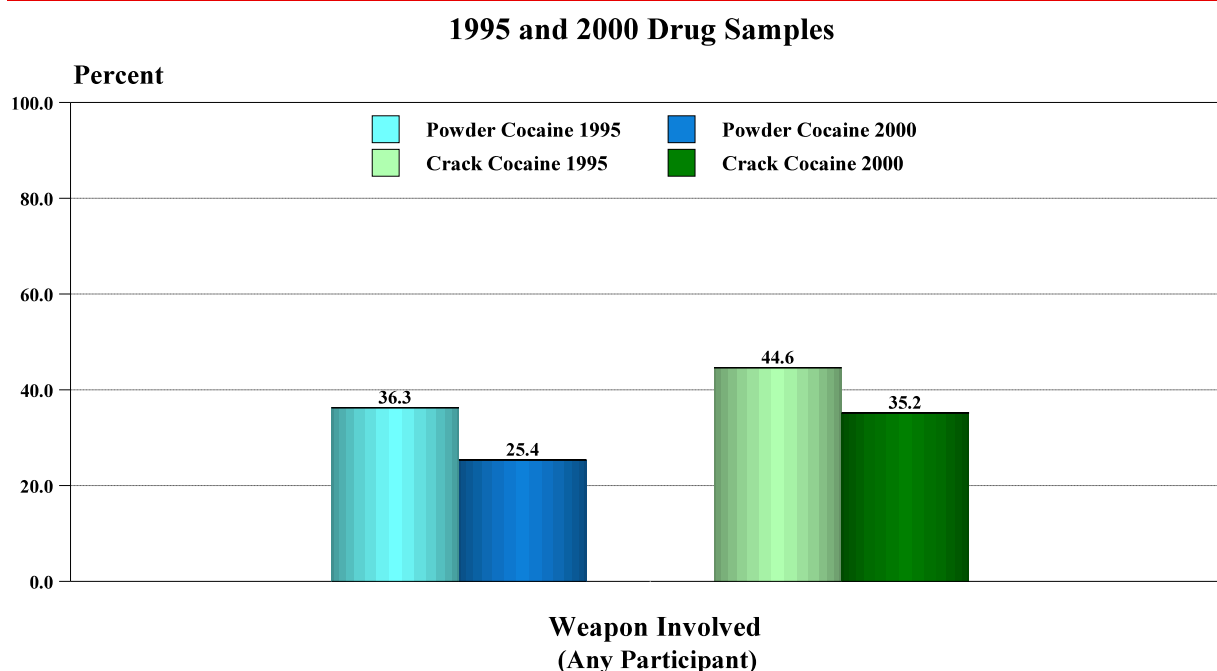
The federal sentencing guidelines currently provide for sentence increases for some of these aggravating factors (*e.g.*, weapon possession). However, the 1995 and 2000 drug samples contain information on the presence of certain additional aggravating factors, regardless of whether guideline sentencing enhancements currently cover such conduct or were applied, if available.

¹²² Powder cocaine and crack cocaine offenders received aggravating role enhancements at approximately the same rate, 8.0 percent and 7.4 percent, respectively, in 2000.

a. Weapons

Weapon involvement, the most common aggravating factor, was documented in a minority of cases and declined for both powder cocaine and crack cocaine offenses between 1995 and 2000. Figure 16 shows drug sample data indicating weapon involvement in the offense by any participant, a broad definition that ranges from weapon use by the offender to weapons accessible to unindicted co-participants. In 1995, 36.3 percent of powder cocaine offenses and 44.6 percent of crack cocaine offenses involved weapons under this broad definition. The rate of weapon involvement declined substantially to 25 percent of powder cocaine offenses and 35 percent of crack cocaine offenses in 2000.¹²³

Figure 16
Weapon Involvement for Powder Cocaine and Crack Cocaine Offenses



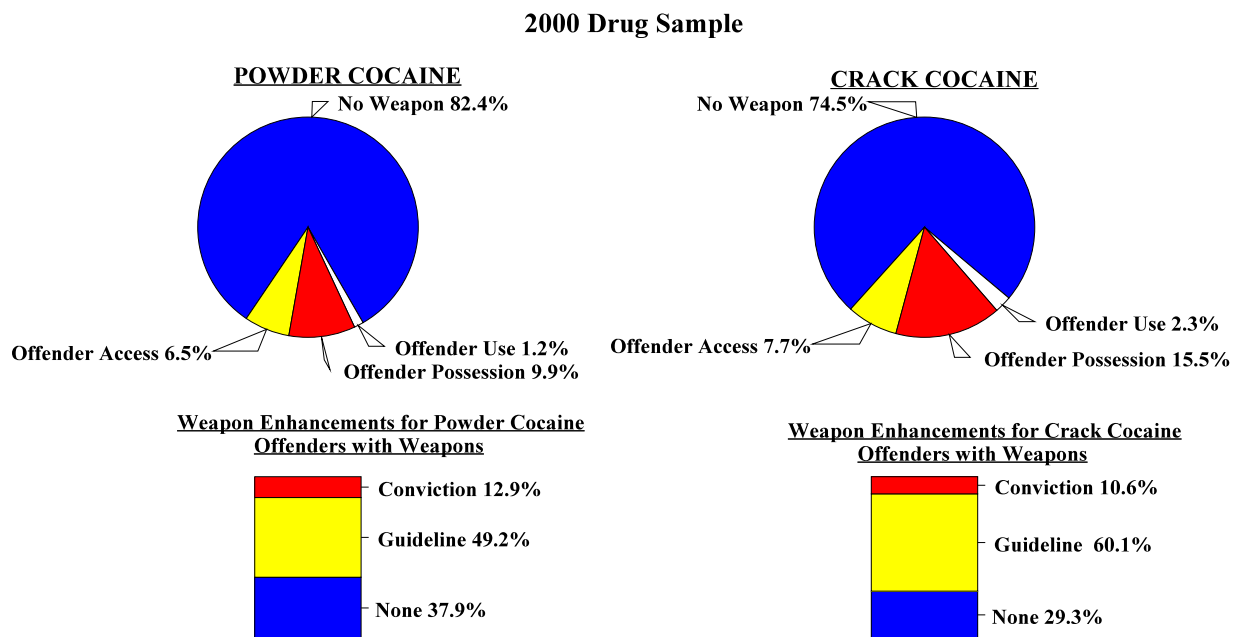
SOURCE: U. S. Sentencing Commission, 1995 and 2000 Drug Samples.

¹²³ Dr. Alfred Blumstein testified that the nature of the crack cocaine market explains both the historically higher rates of violence for crack cocaine offenses and the recent decline of this violence. According to Dr. Blumstein, aggressive competition among dealers and the location of most crack cocaine markets on the streets of the poorest neighborhoods necessitated the carrying of handguns by street-level dealers for protection. The decline in violence associated with crack cocaine markets is attributable to their maturation, the overall decline in the nation's violence rates, and law enforcement efforts to reduce the number of handguns. Written statement by Alfred Blumstein, Ph.D., Professor of Urban Systems and Operations Research, Carnegie Mellon University, to the U.S. Sentencing Commission regarding Drug Penalties (Feb. 25, 2002) at 4.

Another measure of weapon involvement in the drug sample data documented weapon involvement exclusively by the offender, excluding weapon use by others in the offense.¹²⁴ As would be expected, weapon involvement by the offender is less frequent than weapon involvement by any participant in the overall offense. In 2000, 82.4 percent of powder cocaine offenders and 74.5 percent of crack cocaine offenders *did not* have any weapon involvement. (See pie charts in Fig. 17.)

The pie charts in Figure 17 demonstrate that, in those cocaine cases in which weapons were present, the weapon involvement tended to be relatively less aggravated in nature. Specifically, for both powder cocaine and crack cocaine offenders, when weapons were involved, the mode of involvement nearly always was accessibility (6.5% of powder cocaine offenders and 7.7% of crack cocaine offenders) or inactive possession (9.9% of powder cocaine offenders and 15.5% of crack cocaine offenders), rather than active use of the weapon (1.2% of powder cocaine offenders and 2.3% of crack cocaine offenders).

Figure 17
Offender Weapon Involvement and Weapon Enhancements
in Powder Cocaine and Crack Cocaine Offenses



SOURCE: U. S. Sentencing Commission, 1995 and 2000 Drug Samples.

¹²⁴ Defendant weapon involvement was assessed based on the description of the offense in the Presentence Report, regardless of whether the defendant was held accountable for any weapons at sentencing.

The current federal sentencing scheme provides two alternative means for increasing sentences for weapon possession in drug trafficking offenses. Federal drug offenders with weapons may be either statutorily convicted under 18 U.S.C. § 924(c) (Possession of a Firearm in Relation to a Drug Trafficking Offense), or, alternatively, they may be subject to application of the weapon enhancement in the drug trafficking guideline.¹²⁵

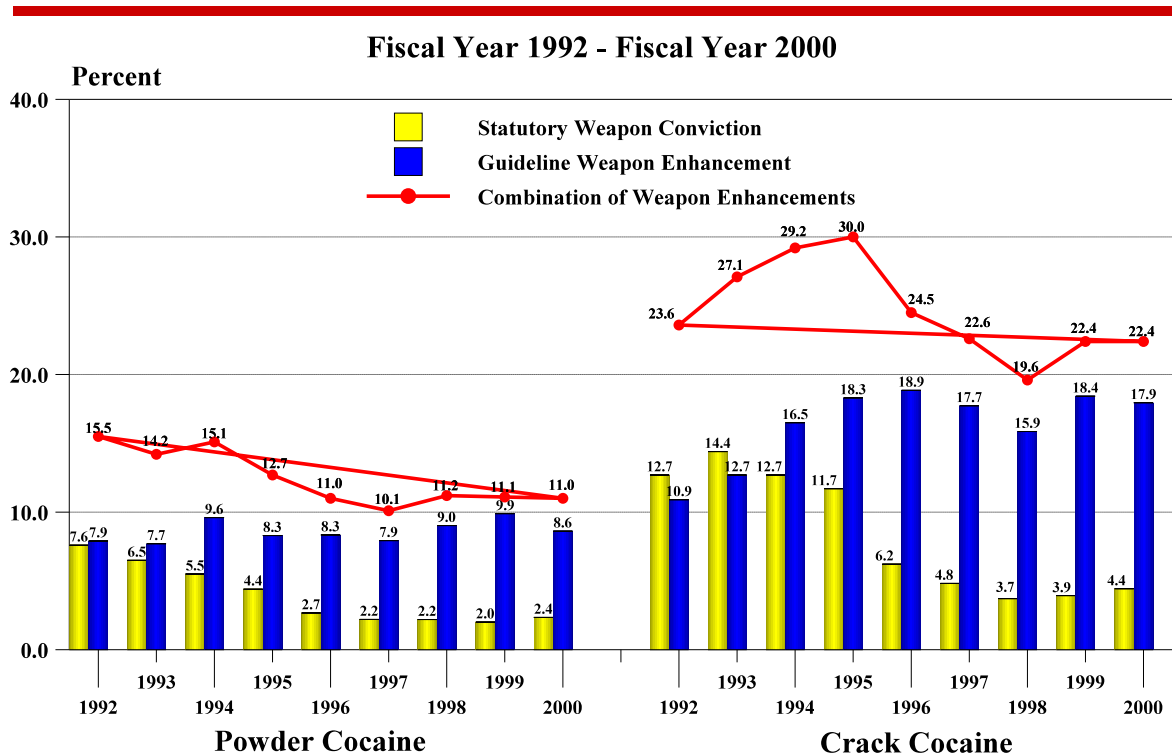
Interestingly, the bar charts in Figure 17 show that not all cocaine offenders whose offense conduct included weapon involvement received sentencing enhancements for this conduct. More than one-third (37.9%) of powder cocaine offenders who at least had access to a weapon (access, possession, or use) received *neither* the guideline weapon enhancement nor a conviction under 18 U.S.C. § 924(c). Similarly, 29.3 percent of crack cocaine offenders who at least had access to a weapon received *neither* weapon enhancement. The fact that weapon enhancements were not applied to seemingly eligible offenders may be attributed to various factors (proof issues, plea bargaining, etc.).

¹²⁵ A conviction under 18 U.S.C. § 924(c) carries mandatory minimum consecutive sentences of at least five years, seven years, or ten years, depending on whether the weapon is possessed, brandished, or discharged, and the USSG §2D1.1 guideline enhancement carries an increase of two offense levels for possession of a dangerous weapon, an approximate 25 percent increase in sentence. Offenders are eligible for one or the other, but generally not both, except in very rare circumstances.

Figure 18 also illustrates the different rates of application of sentence increases for weapon involvement between the two forms of cocaine. Figure 18 shows trends in the application of statutory and guideline weapon enhancements for *all* cocaine offenses sentenced between 1992 and 2000. Crack cocaine offenders consistently have been more likely than powder cocaine offenders to receive statutory or guideline-based weapon enhancements, and this difference has increased over time.

The lines in Figure 18 show the combined application rates of the two weapon enhancements. In 1992, 23.6 percent of crack cocaine offenders received one or the other of the weapon-related sentence increases, compared to 15.5 percent of powder cocaine offenders, a difference of 8.1 percentage points. This difference increased to 11.4 percentage points by 2000, when 22.4 percent of crack cocaine offenders and 11 percent of powder cocaine offenders received either of the sentence increases. This change is another factor that contributes to the increasing sentencing gap between crack cocaine and powder cocaine offenders.

Figure 18
Trends in Application of Weapon Enhancements in Powder Cocaine and Crack Cocaine Cases



SOURCE: U. S. Sentencing Commission, 1992 - 2000 Datafiles, MONFY92-USSCFY00.

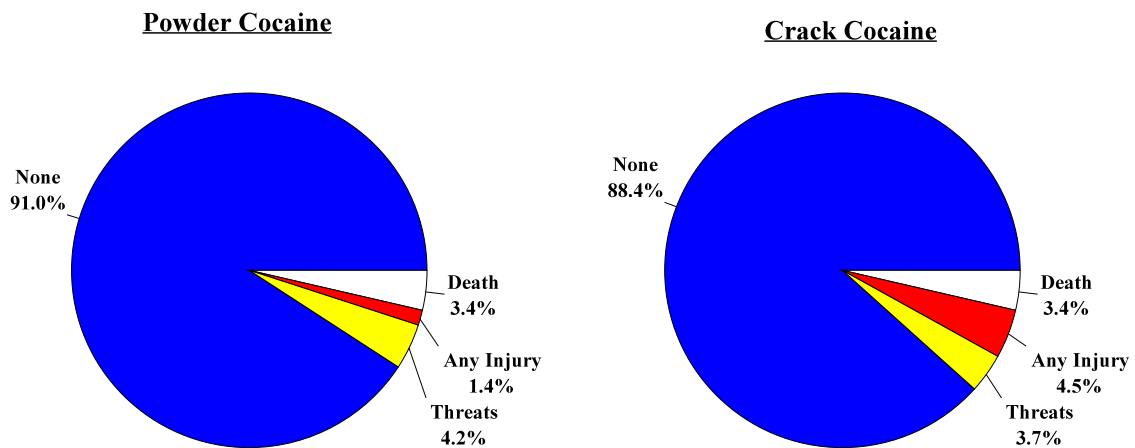
b. Aggravating Factors Other Than Weapon Involvement

The prevalence of other aggravating factors among both powder and crack cocaine offenders is substantially lower than weapon involvement. Following the pattern for weapon involvement, the prevalence of these other factors also declined between 1995 and 2000.

Bodily injury (defined as a credible threat or actual harm to any person by any participant in the offense) is uncommon in both powder cocaine and crack cocaine offenses. Figure 19 shows that bodily injury occurred in less than ten percent of powder cocaine and crack cocaine cases in 2000. Although rare, injury was more common in crack cocaine cases (4.5%) than powder cocaine cases (1.4%), but death (resulting from violence rather than drug use) occurred at the same rate for both forms of the drug (3.4%).

Figure 19
Bodily Injury in Powder Cocaine and Crack Cocaine Offenses

2000 Drug Sample

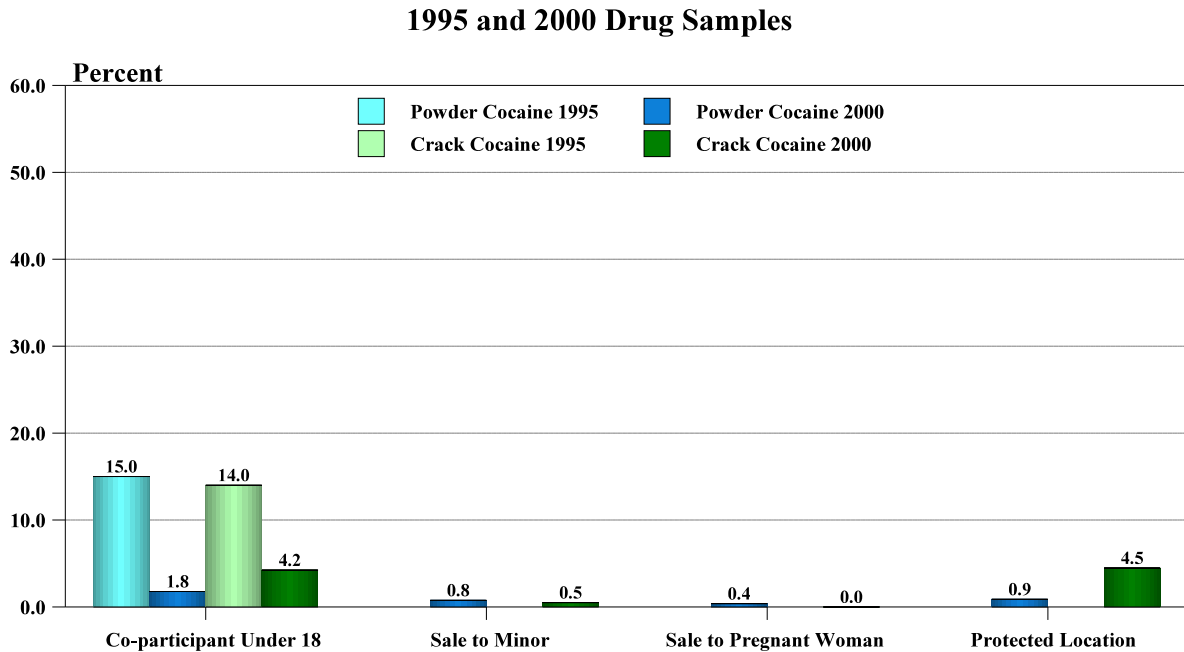


SOURCE: U. S. Sentencing Commission, 2000 Drug Samples.

The involvement of co-participants under 18 years of age, rare in both powder cocaine and crack cocaine offenses, decreased substantially for both drug types between 1995 and 2000. In 1995, 15 percent of powder cocaine offenses and 14 percent of crack cocaine offenses involved minor co-participants, and these figures decreased to 1.8 percent and 4.2 percent, respectively, in 2000.

Data for other aggravating factors (sale of drugs to minors and pregnant women, and sales in protected locations) were available only for the 2000 drug sample, and each of these aggravating factors was documented in less than five percent of both powder cocaine and crack cocaine offenses. (Fig. 20.)

Figure 20
Aggravating Factors in Powder Cocaine and Crack Cocaine Offenses



SOURCE: U. S. Sentencing Commission, 1995 and 2000 Drug Samples.

D. OTHER SENTENCING GUIDELINE FACTORS

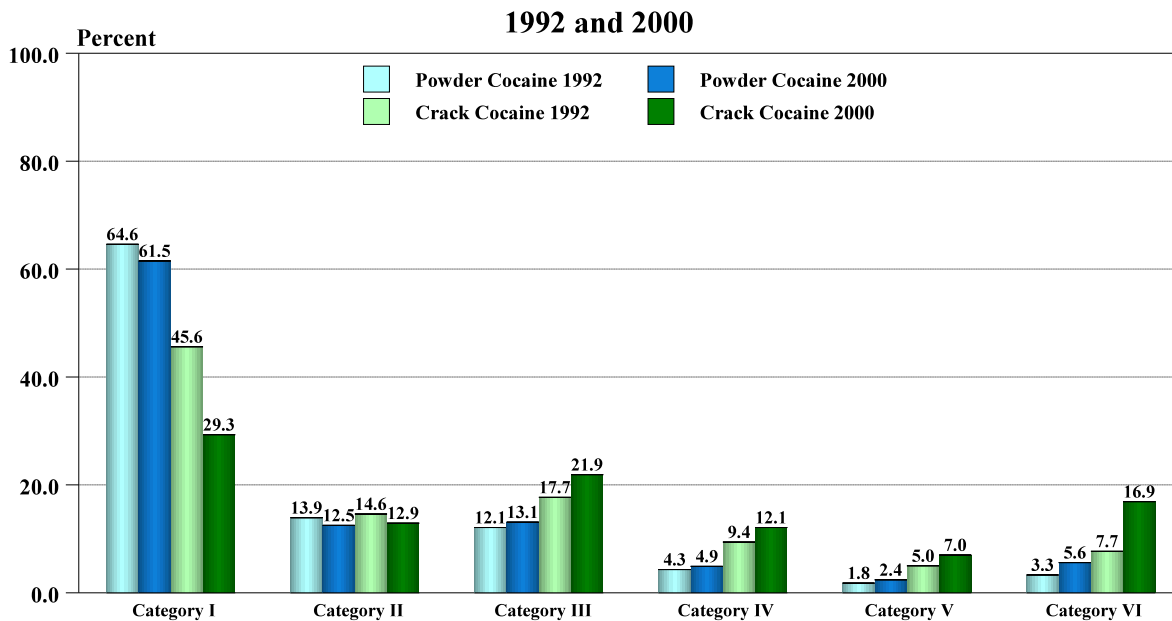
Two additional sentencing guideline factors also have contributed to the widening sentencing gap between powder cocaine and crack cocaine offenders, criminal history of the offender and qualification for the safety valve provision contained in 18 U.S.C. § 3553(f) and USSG §5C1.2. A third sentencing factor, judicial departure from the guideline range, does not appear to have contributed to the sentencing gap.

1. Criminal History

In addition to offense severity (calculated in Chapter 2 of the guidelines), criminal history is a major component in determining an offender’s sentence under the federal sentencing guidelines. Crack cocaine offenders generally have more extensive criminal histories compared to powder cocaine offenders, as measured by the smaller number of crack cocaine offenders in Criminal History Category I and their relatively larger number in Criminal History Category VI.

In 1992, 64.6 percent of powder cocaine offenders and 45.6 percent of crack cocaine offenders were in Criminal History Category I, a 19 percentage point difference. (Fig. 21.) This difference increased to 32.2 percentage points by 2000, as 61.5 percent of powder cocaine offenders were in Criminal History Category I, while only 29.3 percent of crack cocaine offenders were in that category.

Figure 21
Distribution of Criminal History Category for
Powder Cocaine and Crack Cocaine Offenders



SOURCE: U. S. Sentencing Commission, 1992 and 2000 Datafiles, MONFY92 and USSCFY00.

The trend of increasing criminal history among crack cocaine offenders also is apparent in the most serious criminal history category. In 1992, 7.7 percent of crack cocaine offenders were in Criminal History Category VI, compared to 3.3 percent of powder cocaine offenders, a 4.4 percentage point difference. By 2000, the difference had increased to 11.3 percentage points, with 16.9 percent of crack cocaine offenders and 5.6 percent of powder cocaine offenders in Criminal History Category VI. Some significant part of the widening gap between powder cocaine sentences and crack cocaine sentences, therefore, is attributable to increases since 1992 in the proportion of crack cocaine offenders with extensive criminal histories, and unrelated to the different treatment for powder cocaine and crack cocaine in the statutory minimums and guidelines' Drug Quantity Table.

2. Safety Valve

In 1995, the Commission implemented a statutory provision (18 U.S.C. § 3553(f)), commonly known as the safety valve by promulgating USSG §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases). This provision allows the court to sentence qualifying offenders below the quantity-based statutory mandatory minimum penalty.¹²⁶

The safety valve provision is relevant to the sentencing gap because powder cocaine offenders tend to qualify for the reduction more often than crack cocaine offenders. In 2000, 37.3 percent of powder cocaine offenders received the safety valve reduction, compared to 15.4 percent of crack cocaine offenders. As discussed above, crack cocaine offenders have more extensive criminal histories than powder cocaine offenders, and this factor most often disqualifies crack cocaine offenders from receiving safety valve reductions.

Other disqualifying factors generally are rare but occur more often in crack cocaine offenses, which also contribute to lower safety valve rates for crack cocaine offenses. Specifically, as demonstrated earlier, both weapon involvement and bodily injury occur more frequently among crack cocaine offenses than powder cocaine offenses.

3. Departures

The federal sentencing guidelines provide two types of departures, allowing the court in appropriate circumstances to impose sentences below those directed by either the sentencing guidelines or, in the case of substantial assistance, below any mandatory minimum for the statute of conviction. Downward departures are applied at the court's discretion upon finding "mitigating circumstances of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described."¹²⁷ Substantial assistance departures enable the court to depart below statutory mandatory minimum penalties "upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person"¹²⁸

¹²⁶ In order to qualify for the safety valve, the defendant had a maximum of one criminal history point, did not use violence or weapons, was not an organizer or leader, did not engage in a continuing criminal enterprise, and did provide, in a timely manner, all information about the offense to the Government. In addition, the offense must not have resulted in death or serious bodily injury.

¹²⁷ See USSG §5K2.0 and accompanying commentary; 18 U.S.C. § 3553(b).

¹²⁸ See USSG §5K1.1 and accompanying commentary; 18 U.S.C. § 3553(e).

The departure rates for powder cocaine and crack cocaine offenses are very similar. Courts departed downward in 9.4 percent of powder cocaine offenses and 8.2 percent of crack cocaine offenses in 2000.¹²⁹ Substantial assistance departures are much more common in cocaine cases and were granted in 30.4 percent of powder cocaine offenses and 32.3 percent of crack cocaine offenses in 2000.

¹²⁹ Upward departures, which are very uncommon, also were applied at the same rates, 0.2 percent of both powder cocaine and crack cocaine offenses in 2000.