

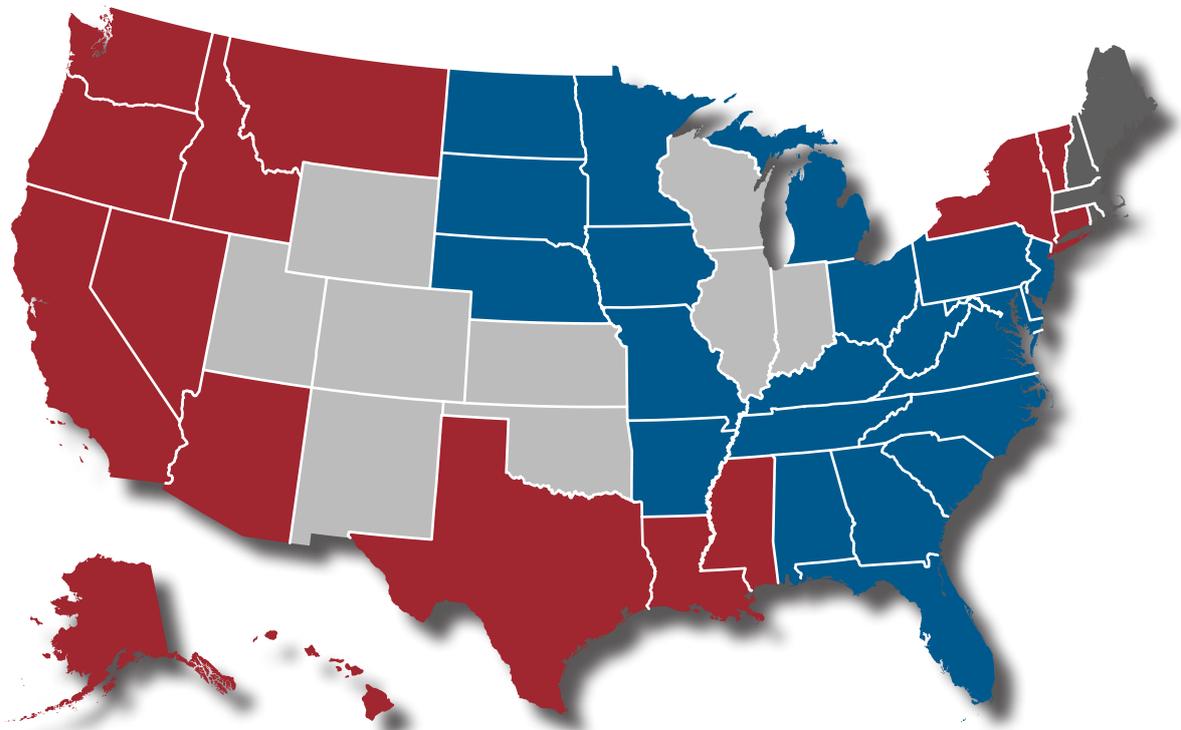
# Circuit Conflict Questions

The proposed amendment addresses two circuit conflicts involving the definition of “controlled substance offense” in subsection (b) of §4B1.2. Section 2K2.1 incorporates this definition by reference, providing for a higher base offense level if the defendant committed the instant offense after sustaining a conviction for a “controlled substance offense.”

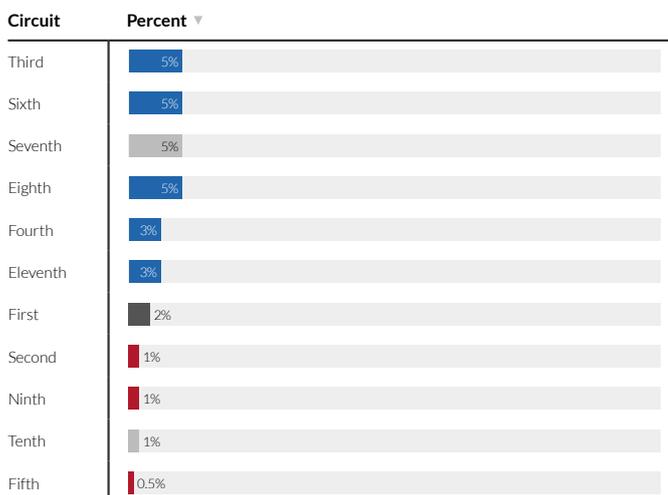
The **first circuit conflict** concerns whether the definition of a “controlled substance offense” in §4B1.2(b) only includes substances controlled by the federal Controlled Substances Act, or whether the definition also includes substances controlled by applicable state law.

The **second circuit conflict** concerns which temporal version of the applicable drug schedule should be used to decide if a prior offense qualifies as a predicate “controlled substance offense”: (1) the schedule in place at the time of defendant’s prior conviction; or (2) the schedule in place at the time of the instant offense or sentencing for the instant federal offense.

- Broader Definition (State or Federal) + Timing of Prior Offense
- Narrower Definition (Federal Only) + Timing of Instant Offense/Sentencing
- No Definition Specified, Timing of Instant Offense/Sentencing
- Broader Definition (State or Federal), No Timing Specified



Percentage of Individuals Sentenced as Career Offenders



Percentage of Individuals Sentenced Under §2K2.1 with Base Offense Levels 24 or 26

