



## **2025 PROPOSED AMENDMENTS ON DRUG OFFENSES**

My name is Amy Dezember, and I am a Senior Research Associate in the Office of Research and Data at the United States Sentencing Commission. On January 24, 2025, the Commission voted to publish proposed amendments to the United States Sentencing Guidelines, including a proposed amendment on Drug Offenses. The Commission is seeking public comment on the proposed amendments.

The proposed drug amendment contains five parts (Parts A through E). The Commission is considering whether to promulgate any or all of these parts, as they are not mutually exclusive. Part A of the proposed amendment includes two subparts to address concerns that the Drug Quantity Table at §2D1.1(c) overly relies on drug type and quantity as a measure of offense culpability and results in sentences greater than necessary to accomplish the purposes of sentencing. Part B of the proposed amendment addresses methamphetamine offenses and would amend §2D1.1 to address offenses involving Ice and address the purity distinction between methamphetamine in “actual” form and methamphetamine as part of a mixture. Part C of the proposed amendment would amend §2D1.1 to revise the enhancement for fentanyl and fentanyl analogue misrepresentation at subsection (b)(13). Part D of the proposed amendment would amend the dangerous weapons enhancement at §2D1.1(b)(1) for cases involving machineguns. Part E of the proposed amendment would amend §5C1.2 to address the manner by which a defendant may satisfy subsection (a)(5)’s requirement of providing truthful information and evidence to the Government. During this presentation, the Commission will provide background data regarding parts A through D to inform public comment.

### **Part A: Recalibrating the Use of Drug Weight in §2D1.1**

First, we will review data related to Part A of the proposed amendment aimed at recalibrating the use of drug weight in §2D1.1. This proposed amendment includes two subparts. Subpart 1 sets forth three options for amending §2D1.1 to set the highest base offense level in the Drug Quantity Table at a lower base offense level. Subpart 2 sets forth two options for amending §2D1.1 to add a new specific offense characteristic providing for a reduction relating to low-level trafficking functions.

First, when looking at the frequency of individuals sentence at the higher base offense levels, 64.5% of individuals started with a base offense level of 30 through 38. Of those cases, 62.7% were sentenced for methamphetamine trafficking, 16.7% for powder cocaine trafficking, and 13% for fentanyl. These three drugs make up over 92% of cases at base offense levels 30 through 38.



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When looking at the primary drug type trafficked for base offense levels 30 through 38, methamphetamine is the most frequently trafficked drug and becomes a larger proportion of the caseload as the base offense level increases. At base offense level 30, 44.2% of individuals were sentenced for trafficking methamphetamine. At base offense level 32, 57.7% of individuals were sentenced for trafficking methamphetamine. At base offense level 34, 65.9% of individuals were sentenced for trafficking methamphetamine. At base offense level 36, 73.1% of individuals were sentenced for trafficking methamphetamine. At base offense level 38, 80.3% of individuals were sentenced for trafficking methamphetamine.

Next, we'll look at how judges sentenced relative to the guideline range for individuals sentenced under the Drug Quantity Table in §2D1.1(a)(5). Looking at data from fiscal year 2023 by base offense level, the percentage of individuals sentenced within the guideline range, which is reflected in grey, is lowest at the highest base offense levels. About one-quarter or fewer of the individuals at base offense levels 30 through 38 received a within range sentence. Looking at individuals who received a sentence below the guideline range, which is reflected in darker blue, between 43 and 49% of individuals at base offense levels 30 and above received a below range sentence. For individuals who received a departure under §5K1.1 and §5K3.1, reflected in the lighter blue, a higher percentage of individuals received these departures at the higher base offense levels. Specifically, one-quarter or more of individuals at base offense levels 30 and above received a departure under §5K1.1 or §5K3.1. Finally, fewer than 1% of cases at base offense level 30 or higher received an above range sentence, reflected in black.

This slide presents the average guideline minimum and the average sentence imposed for individuals sentenced in fiscal year 2023 by base offense level, including individuals who received a departure under §5K1.1 or §5K3.1. The average guideline minimum is represented by the blue line, and the average sentence imposed is represented by the red line. As the base offense level increases, the gap between the average guideline minimum and average sentence imposed also increases.

Next, we'll look at the same information but excluding cases where the sentence was a departure from the guidelines under §5K1.1 or §5K3.1. Again, the gap between the average guideline minimum and average sentence imposed is largest at the highest base offense levels.

If the Commission adopts any of the options in Part A Subpart 1 to decrease the highest base offense level of the Drug Quantity Table, it will require changes to the mitigating role cap at §2D1.1(a)(5). For individuals sentenced under the Drug Quantity Table in fiscal year 2023, the mitigating role cap was applied in 11.8% of cases. In those cases, methamphetamine was the primary drug trafficked in 69.6% of cases and fentanyl or fentanyl analogue was the primary drug trafficked in 16.7% of cases. These two drug types make up 86% of the cases where the mitigating role cap was applied.



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Next, we'll look at the application of the mitigating role adjustment under §3B1.2 by base offense level in fiscal year 2023. For individuals sentenced under the Drug Quantity Table, almost 40% of individuals with a base offense level of 38 received the mitigating role adjustment. At base offense level 36, 26.1% of individuals received the mitigating role adjustment. At base offense level 34, 18.3% of individuals received the mitigating role adjustment. At base offense level 32, 17.1% of individuals received the mitigating role adjustment. At base offense level 30, 15.1% of individuals received the mitigating role adjustment.

When the mitigating role adjustment under §3B1.2 was applied, the 2-level decrease was most often applied at the higher base offense levels. At base offense level 38, the 2-level decrease was applied in 36.7% of cases. At base offense level 36, the 2-level decrease was applied in 21.3% of cases. At base offense level 34, the 2-level decrease was applied in 14.4% of cases. At base offense level 32, the 2-level decrease was applied in 13.7% of cases. At base offense level 30, the 2-level decrease was applied in 11.2% of cases. At the same base offense levels, the 3-level decrease was applied in approximately 1% of cases and the 4-level decrease was applied in about 2-3% of cases.

To further inform Subpart 2, which would add a new specific offense characteristic providing for a reduction relating to low-level trafficking functions, the Commission reviewed data that were previously released in reports on methamphetamine and fentanyl trafficking offenses released in June 2024 and January 2021, which comprise about two-thirds of the drug trafficking caseload. For more information, these reports are available on the United States Sentencing Commission's website. These functions are ranked by the seriousness of the conduct, with the higher level functions the left of the scale and the lower level function on the right. First, we'll look at methamphetamine offenses and the function performed in a sample of cases of individuals sentenced in fiscal year 2022. The largest category of function performed by individuals sentenced for methamphetamine trafficking was wholesaler, with 35.6% of individuals performing this function. This was followed by 24.3% of individuals performing the function of a courier, 13.8% performing the function of a high-level supplier, and 12.3% performing the function of a street level dealer. Because the number of individuals performing some functions is very small, caution should be used when drawing conclusions about those functions.

Next, we will look at the applications of the aggravating role enhancement at §3B1.1 and the mitigating role reduction at §3B1.2 by function in the same sample of methamphetamine offense cases from fiscal year 2022. The aggravating role enhancement was applied most often to the higher-level functions. It was applied to 83.3% of individuals performing the function of organizer/leaders, 37.5% of those performing the function of managers/supervisors, and 14.4% of those performing the function of high-level suppliers. The mitigating role reduction was applied most often to the lower-level functions. It was applied to 76.7% of individuals performing the function of couriers, 59.7% of those performing the function of employees/workers, and 37.5% of



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those performing the function of brokers. Individuals who performed the functions of wholesalers and street-level dealers in methamphetamine trafficking offenses rarely received either Chapter 3 adjustment.

When looking at the relationship between function and the sentence imposed, individuals performing the function of street-level dealers and wholesalers received the highest percentage of sentences within the guideline range, reflected in grey. About 40% of individuals performing the function of street level dealers, employee/workers, and high-level suppliers received a below range sentence, reflected in the darker blue. About 10.4% of individuals performing the function of couriers received a sentence within range, reflected in grey. Almost two-thirds of couriers received a \$5K1.1 or a \$5K3.1 departure, reflected in the lighter blue.

Now we'll look function in fentanyl and fentanyl analogue trafficking cases. In a sample of cases from fiscal year 2019, 39.3% of individuals performed the function of street-level dealer, 20.2% performed the function of wholesaler, and 12.6% performed the function of courier. Because the number of individuals performing some functions is very small, caution should be used when drawing conclusions about those functions.

The aggravating role enhancement was applied in 75% of cases for individuals performing the function of organizer/leader, 24.2% of those performing the function of manager/supervisor, and 8.3% of those performing the function of high-level supplier/importer. The mitigating role reduction was applied in 51.4% of cases with individuals performing the function of couriers, 43.8% of those performing the function of employee/worker, and 25% of those performing the function of broker and manufacturer. Individuals who performed the functions of wholesalers and street-level dealers in fentanyl and fentanyl analogue trafficking offenses rarely received either Chapter 3 adjustment.

When looking at the sentences relative to the guideline range, almost half of individuals performing the function of a street level dealer received a within range sentence. About 40% of those performing the functions of wholesaler, manager/supervisor, and organizer/leader received a within range sentence. Individuals performing the function of courier received a within range sentence in 16.5% of cases. Individuals who performed the function of couriers most often received \$5K1.1 and \$5K3.1 departures.

## **Part B: Methamphetamine**

Next, we'll discuss data relating to Part B of the proposed amendment, which includes two subparts regarding methamphetamine trafficking offenses. Subpart 1 would amend §2D1.1 to delete all references to "Ice." Subpart 2 would address the 10:1 quantity ratio for methamphetamine mixture and methamphetamine actual, and sets forth two options for setting the quantity thresholds applicable to methamphetamine.



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To start, methamphetamine trafficking offenses make up almost half of the overall drug trafficking caseload. Within methamphetamine offenses in fiscal year 2022, 52.2% of cases involved methamphetamine “actual,” 35.4% involved methamphetamine as part of a mixture, and 12.4% involved Ice.

Individuals trafficking methamphetamine mixture received the shortest average guideline minimum and average sentence imposed while individuals trafficking Ice received the longest. On average, individuals sentenced for trafficking mixture received a sentence of 83 months, those sentenced for trafficking actual received 93 months, and those sentenced for trafficking Ice received 103 months.

When examining the sentences imposed in methamphetamine trafficking cases relative to the guideline range, 26.1% of individuals sentenced for trafficking methamphetamine mixture received a sentence within the guideline range, compared to 23% of methamphetamine actual cases and 21.3% of Ice cases.

When information about the purity of the drug was available in methamphetamines cases, the average drug purity was above the 80% purity threshold to classify as Ice. The average purity ranged from 91 to 98% pure regardless of methamphetamine type.

### **Part C: Misrepresentation of Fentanyl and Fentanyl Analogues**

Part C of the proposed amendment would amend §2D1.1 to revise the current enhancement for fentanyl and fentanyl analogue misrepresentation at subsection (b)(13). Subsection (b)(13) provides a 4-level increase whenever the defendant knowingly misrepresented or knowingly marketed as another substance a mixture or substance containing fentanyl or a fentanyl analogue. In 2023, the Commission revised subsection (b)(13) to add an alternative 2-level enhancement for offenses where the defendant represented or marketed as a legitimately manufactured drug another mixture or substance containing fentanyl or a fentanyl analogue, and acted with willful blindness or conscious avoidance of knowledge that such mixture or substance was not the legitimately manufactured drug. The proposed amendment provides three options for amending subsection (b)(13) to revise the *mens rea* requirement for the enhancement.

In fiscal year 2023, fentanyl and fentanyl analogue cases made up nearly 18% of all drug trafficking offenses. Fentanyl and fentanyl analogue trafficking cases have been steadily increasing over the last five years. Between fiscal years 2019 and 2023, the number of fentanyl trafficking cases increased almost 245% and the number of fentanyl analogue trafficking cases increased 114%.

First, we’ll look at the application of subsection (b)(13) in fentanyl cases. The misrepresentation enhancement was applied in 2.2% of fentanyl cases in fiscal year 2023. Based



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on preliminary data for fiscal year 2024, the 4-level enhancement was applied in 2.7% of cases and the 2-level enhancement was applied in less than 0.5% of cases.

Next, we'll look at the application of subsection (b)(13) in fentanyl analogue cases. In fiscal year 2023, this enhancement was applied in 1.5% of fentanyl analogue cases. Based on preliminary data for fiscal year 2024, the 4-level enhancement was applied in 2.3% of fentanyl analogue cases. The 2-level enhancement was not applied in any fentanyl analogue cases in fiscal year 2024.

Next, we'll look at sentence relative to the guideline range for individuals who received the misrepresentation enhancement. Because the number of individuals who received the misrepresentation enhancement for fentanyl in fiscal year 2024 and for fentanyl analogues in fiscal years 2023 and 2024 were very small, caution should be used when drawing conclusions about these categories. Among all cases in which the misrepresentation enhancement at sub§(b)(13) was applied in fiscal years 2023 and 2024, fewer than one-quarter of individuals sentenced for trafficking fentanyl or a fentanyl analogue received a sentence within the guidelines range, indicated in grey. Another 25-57% of individuals sentenced for trafficking fentanyl or a fentanyl analogue received a sentence below the guideline range, indicated by the darker blue, and 16-50% involved a departure under §5K1.1 or §5K3.1, indicated in the lighter blue.

In fiscal year 2023, cases that received the misrepresentation enhancement at subsection (b)(13) involved a higher guideline minimum and higher average sentence. Among all fentanyl trafficking cases, individuals who received the misrepresentation enhancement were sentenced to an average of 135 months, compared to a sentence of 69 months for those who did not receive the enhancement. Among all fentanyl analogue cases, individuals who received the misrepresentation enhancement were sentenced an average of 179 months, compared to a sentence of 86 months for those who did not receive the enhancement. Again, because the number of individuals who received the misrepresentation enhancement for fentanyl analogue is very small, caution should be used when drawing conclusions about this category.

## **Part D: Machineguns**

Part D of the proposed amendment would amend the application of the specific offense characteristic at §2D1.1(b)(1) to address the involvement of machineguns. The current SOC does not distinguish between different types of dangerous weapons involved in the offense. Part D of the proposed amendment would create a tiered enhancement based on whether the weapon possessed was a machinegun or some other dangerous weapon. Specifically, the amendment would provide for a 4-level enhancement if a machinegun was possessed or a 2-level enhancement if another dangerous weapon was possessed.

To estimate how often this amended enhancement would apply, the Commission reviewed cases in which the dangerous weapon enhancement at subsection (b)(1) was applied to identify



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those cases that involved a machinegun. In fiscal year 2023, the dangerous weapons enhancement was applied in 21.2% of all cases sentenced under §2D1.1, a total of 3,906 cases. Of those cases, 148 involved a machinegun. Those machine gun cases represent 3.9% of the drug trafficking cases in which the weapon SOC was applied.

### **Conclusion**

This concludes the data presentation. For further information on drug trafficking offenses, please visit the United States Sentencing Commission's website at [www.ussc.gov](http://www.ussc.gov).

Comments may be submitted to the Commission at the addresses shown. The original public comment period concludes on March 3, 2025, with a reply comment period closing March 18, 2025.

Thank you.