

Drug Sentencing Guidelines and Recent Legal Developments



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- *Hon. Federico A. Moreno, Chief District Court Judge, Southern District of Florida*
- *Michael Nachmanoff, Federal Public Defender, Eastern District of Virginia*
- *Hon. Linda Reade, Chief District Court Judge, Northern District Of Iowa*
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§2D1.1 Drug Trafficking, Etc.

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

Level

(1) defendant convicted under certain statutes; death/serious injury from drug use; similar prior conviction

43

(2) defendant convicted under certain statutes; death/serious bodily injury resulted from the drug use

38

§2D1.1 Drug Trafficking, Etc.

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

Level

(3) 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

§2D1.1(b) – Select Specific Offense Characteristics

- (1) firearm, dangerous weapon possessed (+2)
- (2) defendant imported or exported using aircraft (non-commercial carrier) or was pilot, captain, etc. on craft or vessel (+2 (Floor of 26))

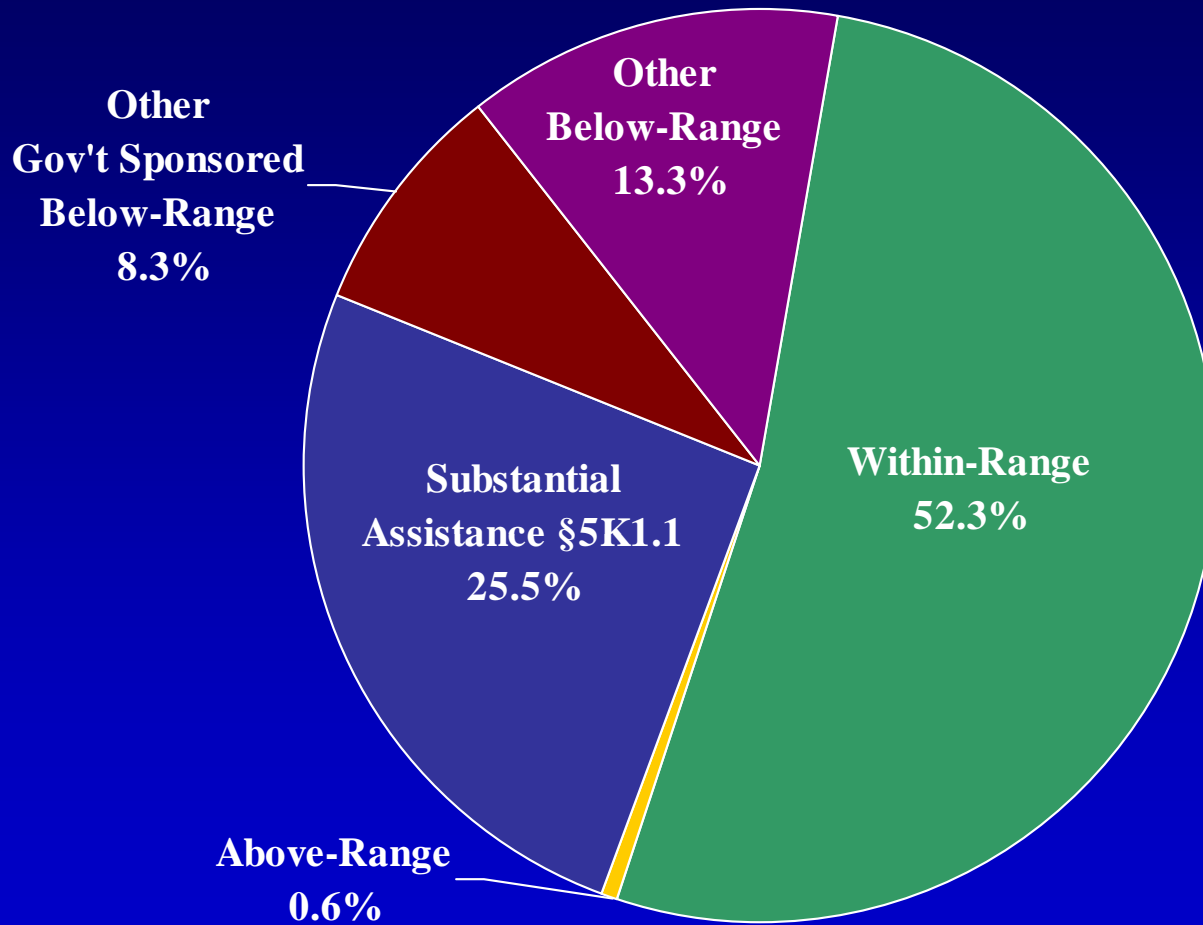
§2D1.1(b) – Select Specific Offense Characteristics

(11) if defendant meets the subdivision criteria of “the safety valve” (§5C1.2) (-2)

Pointers about Application of the Drug Guideline - §2D1.1

- Typically drug weight is entire mixture of substance; only certain drugs look to pure drug weight (Drug Quantity Table Note (A))
- Different types of drugs are aggregated by use of Drug Equivalency Tables (App. Note 10)

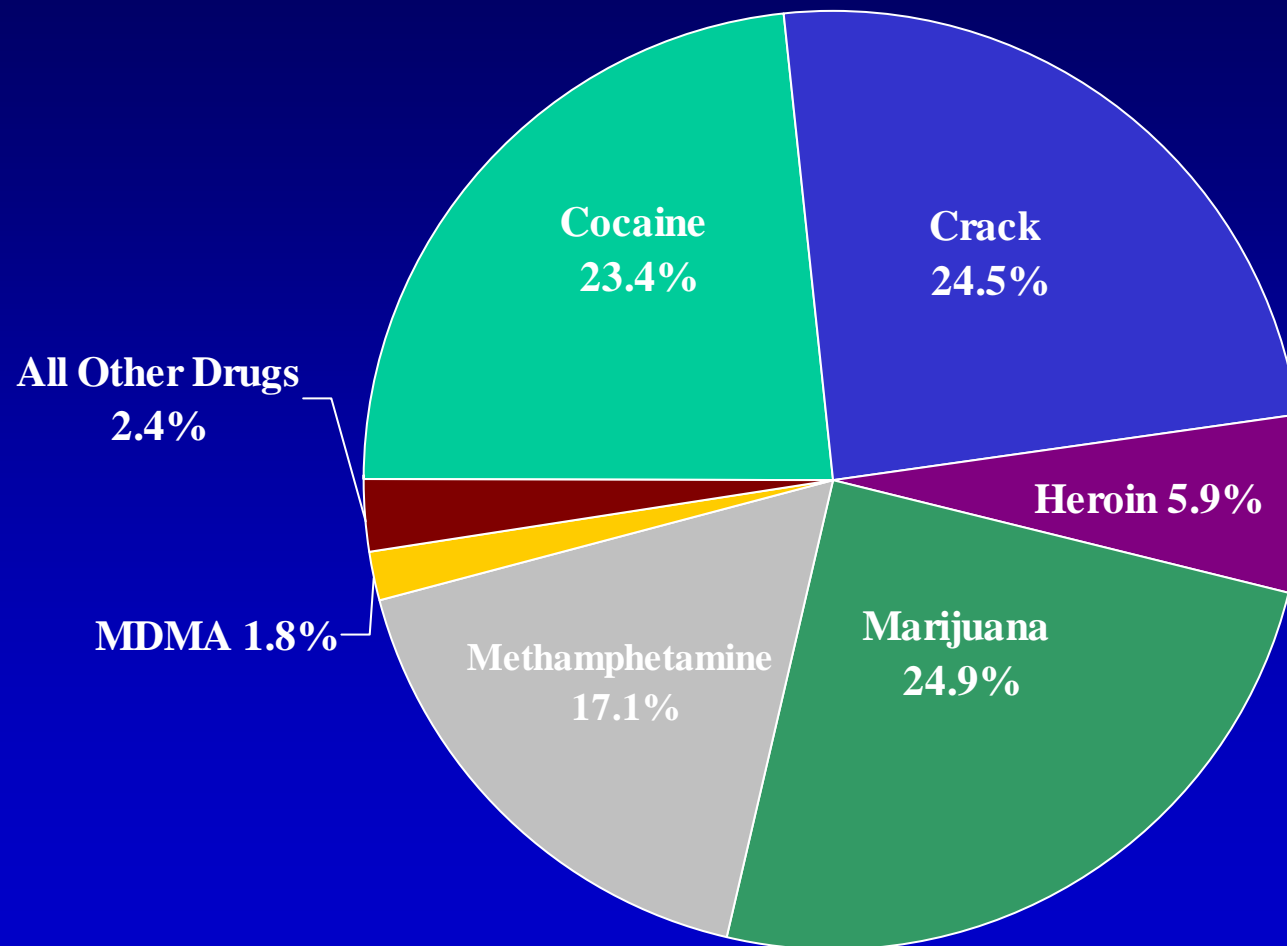
§§2D1.1 and 2D1.2 Drug Trafficking Cases Position of Sentence Relative to the Guideline Range FY2008



Only cases sentenced under USSG §§2D1.1 or 2D1.2 are included in this figure. This figure excludes cases with missing information for the variables required for analysis. Other Government Sponsored Below-Range is comprised of: USSG §5K3.1 and Other Government Sponsored Departures/Variations.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

§§2D1.1 and 2D1.2 Drug Trafficking Cases Distribution of Primary Drug Types FY2008



Only cases sentenced under USSG §§2D1.1 or 2D1.2 are included in this figure. This figure excludes cases with missing information for the variables required for analysis. Marijuana includes Hashish, Hashish Oil and Marijuana Plants. Methamphetamine includes ICE, methamphetamine mixture, methamphetamine actual and methamphetamine precursors.

§§2D1.1 and 2D1.2 Drug Trafficking Cases Position of Sentence Relative to the Guideline Range by Drug Type FY2008

	Total # of Cases	Percent Within-Range	Percent Government Sponsored Below-Range	Percent Other Below-Range	Percent Above-Range
Cocaine	5,816	50.3	35.4	13.7	0.6
Crack	6,086	56.3	27.6	15.5	0.7
Heroin	1,459	48.1	31.1	19.4	1.4
Marijuana	6,208	56.8	33.7	8.9	0.5
Methamphetamine	4,247	46.5	40.1	12.8	0.6
MDMA	464	40.1	39.2	20.3	0.4

Only cases sentenced under USSG §§2D1.1 or 2D1.2 are included in this figure. This figure excludes cases with missing information for the variables required for analysis. Government Sponsored Below-Range is comprised of: USSG §5K1.1, USSG §5K3.1 and Other Government Sponsored Departures/Variations. Marijuana includes Hashish, Hashish Oil and Marijuana Plants. Methamphetamine includes ICE, methamphetamine mixture, methamphetamine actual and methamphetamine precursors.

Online Pharmacies

§§2D1.1, 2D3.1

Ryan Haight Online Pharmacy Consumer Protection Act of 2008

Pub. L. 110-465

- Created 2 new offenses:
 - 21 U.S.C. § 841(h) (Offenses Involving Dispensing of Controlled Substances by Means of the Internet); stat max varies depending upon controlled substance being distributed
 - 21 U.S.C. § 843(c)(2)(A) (Prohibiting the Use of the Internet to Advertise for Sale of a Controlled Substance); stat max of 4 years

Ryan Haight Online Pharmacy Consumer Protection Act (cont.)

Pub. L. 110-465

- Added a sentencing enhancement for Schedule III controlled substances where “death or serious bodily injury results from the use of such substance”

New: §2D1.1(a)(3)

Base Offense Level

- **30**, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5) and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substances and that the defendant committed the offense after one or more prior convictions for a similar offense

New: §2D1.1(a)(4)

Base Offense Level

- **26**, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5) and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance

Ryan Haight Online Pharmacy Consumer Protection Act (cont.)

Pub. L. 110-465

- Increased stat maxes for:
 - all Schedule III controlled substances from 5 to 10 years
 - all Schedule IV controlled substances from 3 to 5 years
 - Schedule V controlled substances from 2 to 4 years if the offense is committed after a prior drug conviction

New: Offenses Involving Schedule III Hydrocodone

§2D1.1

- Raised maximum base offense level for Schedule III hydrocodone from level 20 to level 30
- Added to drug quantity table

Submersible Vessels

§§2D1.1, 2X7.2

Drug Trafficking Vessel Interdiction Act of 2008

Pub. L. 100-407

- Created a new offense:
 - 18 U.S.C. § 2285 (Operation of submersible vessel or semi-submersible vessel without nationality);
stat max of 15 years

U.S.S.C.

Web Site

www.usssc.gov

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