

Drug Offenses

2D1.1 - Drugs

Unlawful Manufacturing, Importing,
Exporting, or Trafficking
(Including Possession with Intent
to Commit These Offenses);
Attempt or Conspiracy

March 23, 2012

Penalties for Drug “Trafficking” Offenses Under 21 USC § 841(a)

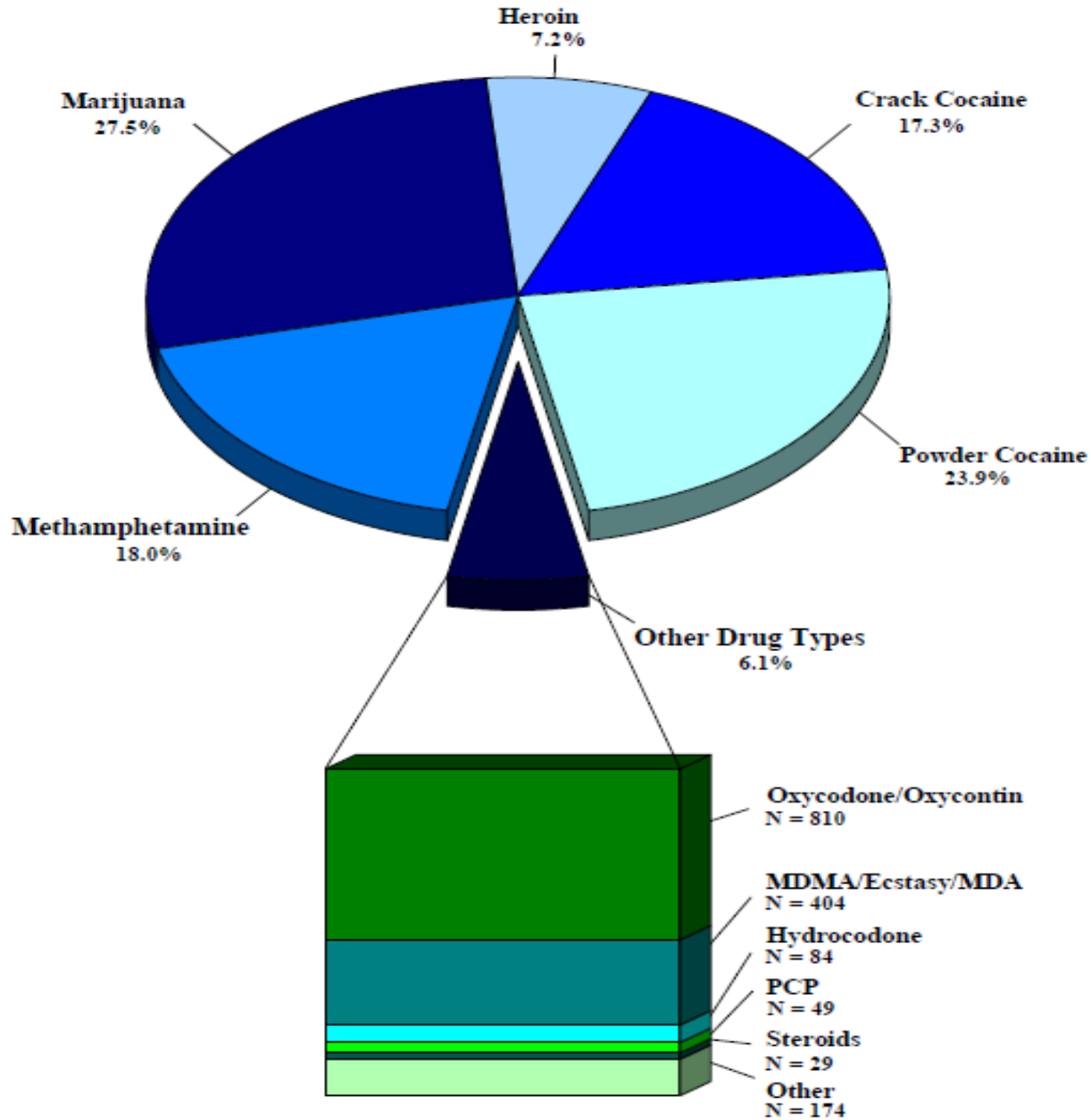
21 USC § 841(b)

Generally, based upon quantity:

- (b)(1)(A): 10 years to life
- (b)(1)(B): 5 years to 40 years
- (b)(1)(C): zero years to 20 years

Figure K

DISTRIBUTION OF DRUG TYPE¹
Fiscal Year 2011



Relevant Conduct & Multiple Counts

§ 2D1.1 & 1B1.3(a)(2) & 3D1.2(d)

- Acts in the same course of conduct, common scheme or plan as the offense(s) of conviction will be included
- There will only be a single application of the multiple counts of 2D1.1, based on all relevant conduct

§2D1.1 Drug Trafficking, Etc.

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

	<u>Level</u>
(1) defendant convicted under 21/841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 960(b)(1), (b)(2), or (b)(3), and conviction establishes death/serious injury from drug use; and committed after similar prior conviction	43
(2) defendant convicted under 21/841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 960(b)(1), (b)(2), or (b)(3), and conviction establishes death/serious injury from drug use	38

§2D1.1 Drug Trafficking, Etc.

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

	<u>Level</u>
(3) defendant convicted under 21/841(b)(1)(E) or 960(b)(5), and conviction establishes death/serious injury from drug use; and committed after similar prior conviction	30
(4) defendant convicted under 21/841(b)(1)(E), or 960(b)(5), and conviction establishes death/serious injury from drug use	26

§2D1.1 Drug Trafficking, Etc.

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

(5) 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

If resulting BOL is greater than 32, and *minimal* role (3B1.2(a)) applies, decrease to BOL 32

Drug Quantity Table

Base Offense Levels for Cocaine

150	KG	↑	Level 38
50	KG	↑	Level 36
15	KG	↑	Level 34
5	KG	↑	Level 32
3.5	KG	↑	Level 30
2	KG	↑	Level 28
500	G	↑	Level 26

400	G	↑	Level 24
300	G	↑	Level 22
200	G	↑	Level 20
100	G	↑	Level 18
50	G	↑	Level 16
25	G	↑	Level 14
Less than 25	G	↑	Level 12

Drug Weight in the Application of §2D1.1

- Typically drug weight is entire mixture or substance; only certain drugs look to pure drug weight
 - Drug Quantity Table Notes (immediately following the Drug Quantity Table)
- Different types of drugs are aggregated by use of Drug Equivalency Tables
 - Application Note 10

Weight of Controlled Substance

Note (A) to Drug Quantity Table

- Unless otherwise specified, the weight of a controlled substance refers to the entire weight of any mixture or substance containing a detectable amount of the controlled substance
- If a mixture or substance contains more than one controlled substance, the weight is based on the one that results in the greatest offense level

Drug Equivalency Tables

Application Note 10

- Drugs not included on the Drug Quantity Table are converted to marijuana
- Differing drugs are converted to marijuana so as to be aggregated

Drug “Actual”

Drug Quantity Table Notes (A), (B), & (C)

- Drug purity is only factored for PCP, amphetamine, methamphetamine, “ice”, and oxycodone
- A comparison is made between the drug “actual” and the mixture or substance for PCP, amphetamine, and meth

Typical Weight Per Unit Table

Application Note 11

Use only if
the number of doses, pills, or capsules
but not the weight
of the controlled substance is known

(b) Specific Offense Characteristics

	<u>Level</u>
(1) firearm, dangerous weapon possessed	+2

(16) if defendant meets the <u>subdivision criteria</u> (1)-(5) of §5C1.2(a) (“the safety valve”)	-2
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“Firearm” SOC

§2D1.1(b)(1) & App. Note 3

“...should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense.”

Note: Under relevant conduct a defendant can be held accountable for a coparticipant’s firearm

SOC (b)(16) at 2D1.1

2-Level Decrease

- The defendant must only meet the criteria set forth in **subdivisions (1)–(5)** of subsection (a) of 5C1.2 (“The Safety Valve”)
 - Defendant does not have to be convicted under select statutes listed at 5C1.2(a) that qualify for “The Safety Valve” (18 USC 3553(f))
 - Defendant does not have to otherwise be subject to a mandatory minimum penalty

“Safety Valve”

18 USC § 3553(f)
& §5C1.2

“Safety Valve”

18 U.S.C. § 3553(f)

- Court makes determination; no government motion required
- Sentence without regard to mandatory minimums for violations of select drug statutes
- Downward departures for mitigating factors or variances possible

“Safety Valve”

§5C1.2(a)

In the case of an offense subject to a mandatory minimum sentence under 21 U.S.C. 841, 844, 846, 960, or 963, the court shall impose a sentence in accordance with the applicable guidelines without regard to any statutory minimum sentence, if the court finds the defendant meets the criteria set forth below:

5C1.2(a)

Subdivisions (1) – (5)

1. Defendant does not have more than 1 Criminal History Point
2. Defendant did not use violence/threats of violence or possess a firearm or other dangerous weapon in connection with the offense
3. Offense did not result in death or serious bodily injury

4. Defendant was not an organizer/leader/manager/supervisor of others in the offense; was not engaged in a CCE
5. Defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or common scheme or plan.

Use of the Term “Defendant” in the Safety Valve

- **NOTE:** while a defendant may be accountable for a firearm at §2D1.1(b)(1) based on the act of another, he/she may still qualify for the SOC reduction at §2D1.1(b)(16) (“safety valve” subdivision criteria) or for the “safety valve” itself, because §5C1.2(a)(2) only requires that “the **defendant** did not ...possess a firearm... in connection with the offense”

5C1.2(b)

In the case of a defendant

1. Who meets the criteria set forth in subsection (a); and
2. Who is facing a mandatory minimum sentence of at least five years,

The offense level applicable from Chapters Two and Three shall not be less than level **17**

Note: The guideline range for OL 17 at CHC I is 24-30 mos.; a departure or variance below this range is still possible²⁵

END