

Marijuana Grow Sites



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Marijuana Cultivation Issues

- **The Commission received a letter from members of the California congressional delegation requesting a review of the guidelines as they relate to environmental and public safety threats posed by marijuana cultivation on public lands or while trespassing on private property.**
- **Commission staff met with various stakeholders to learn more about the Member's concerns.**
- **Data on this issue is not readily available in the Commission's standard datafile and so a special coding project was undertaken to augment our data.**
- **The special coding project identified 515 marijuana grow operations.**

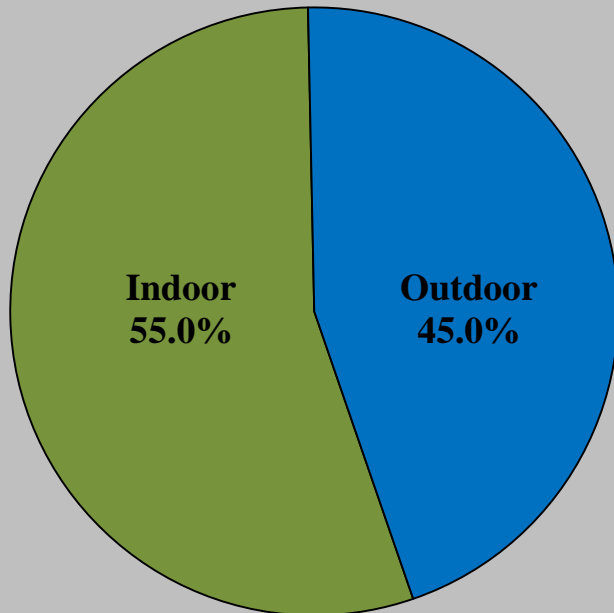
Marijuana Grow Sites

Fiscal Year 2012

Marijuana Grow Sites

Fiscal Year 2012

Type of Grow Site
N=515



Type of Grow Site		
	Indoor (N=283)	Outdoor (N=232)
Public Property	0.0	54.3
Trespassing	0.0	12.5
Private Property	99.7	20.7
Indeterminable	0.3	12.5

	Average Number of Plants
Indoor Site	775 (BOL 22)
Outdoor Site	9,989 (BOL 30)

Only cases with complete guideline application information sentenced under USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life) or 2D1.14 (Narco-Terrorism) with a primary drug type of marijuana plants and sufficient information to determine type of grow site were included in this analysis (N=515). The average number of plants analysis is limited to those offenses with ‘Marijuana Plants’ as the primary unit of drug weight measurement and this analysis excludes ‘Marijuana Plants’ cases missing information on number of plants.

SOURCE: U.S. Sentencing Commission, Marijuana Plants Special Coding Project.

Status of Offenders at Marijuana Grow Sites

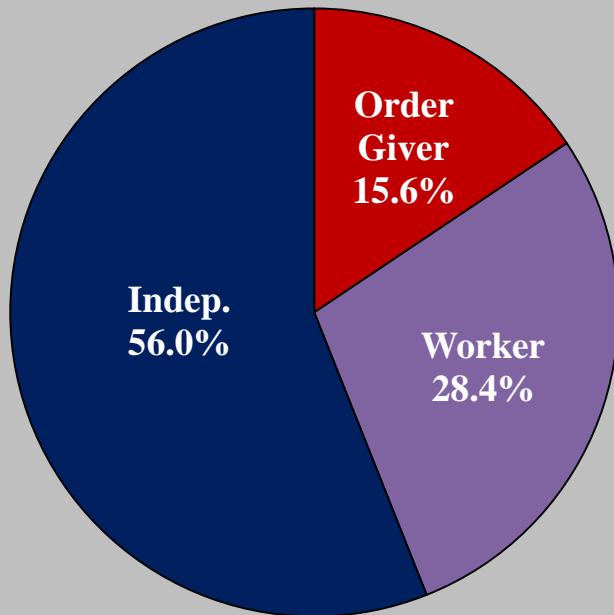
Fiscal Year 2012

- **Order Giver:** An offender who displayed some type of decision-making authority over the grow site and/or other participants.
- **Worker:** An offender who took direction from another participant and showed no decision-making authority over the site or other participants.
- **Independent:** An offender who took no direction from and gave no direction to others.
 - May be the only offender involved in the offense.
 - May be a member of a conspiracy in which all offenders have equal authority.

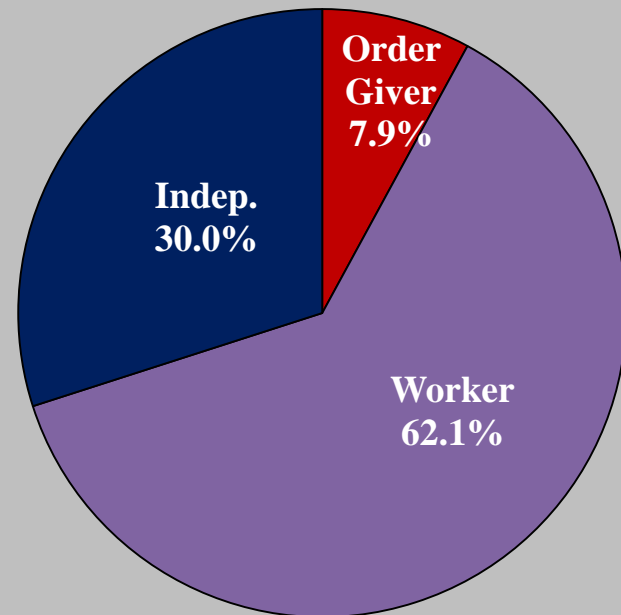
Status of Offender in Marijuana Grow Sites

Fiscal Year 2012

Indoor Sites
N=282



Outdoor Sites
N=227



Only cases with complete guideline application information sentenced under USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life) or 2D1.14 (Narco-Terrorism) with a primary drug type of marijuana plants and sufficient information to determine type of grow site were included in this analysis (N=515). The offender's status in the hierarchy could not be determined for six of the 515 offenders; this excluded one offender from the indoor sites analysis and five offenders from the outdoor sites analysis.

SOURCE: U.S. Sentencing Commission, Marijuana Plants Special Coding Project.

Environmental Harm at Outdoor Marijuana Grow Sites Fiscal Year 2012

- Four Categories of Harm:
 1. Presence/Use of Toxic Chemicals at Outdoor Grow Sites
 - Fertilizers, insecticides, rodenticides, etc.
 - Although fertilizers may have been present at indoor grow sites, none of the cases documented any improper use/disposal of these chemicals.
 2. Disruption of Land
 - Digging holes, clearing land, cutting trees, etc.
 3. Disruption of Water
 - Irrigation, diverting water sources, building dams, etc.
 4. Trash
 - Littering at the site.

Environmental Harm at Marijuana Grow Sites

Fiscal Year 2012

Indoor Sites with Documented Environmental Harm

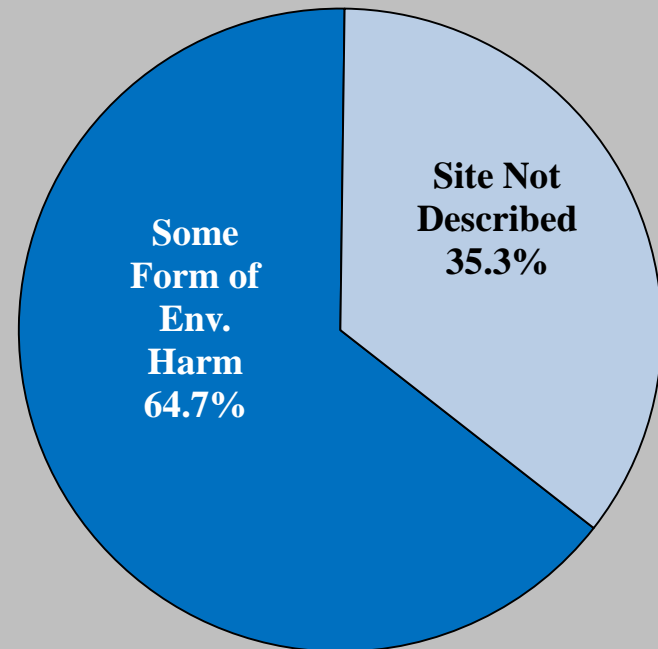
N=283



- **None of the indoor sites documented any environmental harm.**

Outdoor Sites with Documented Environmental Harm

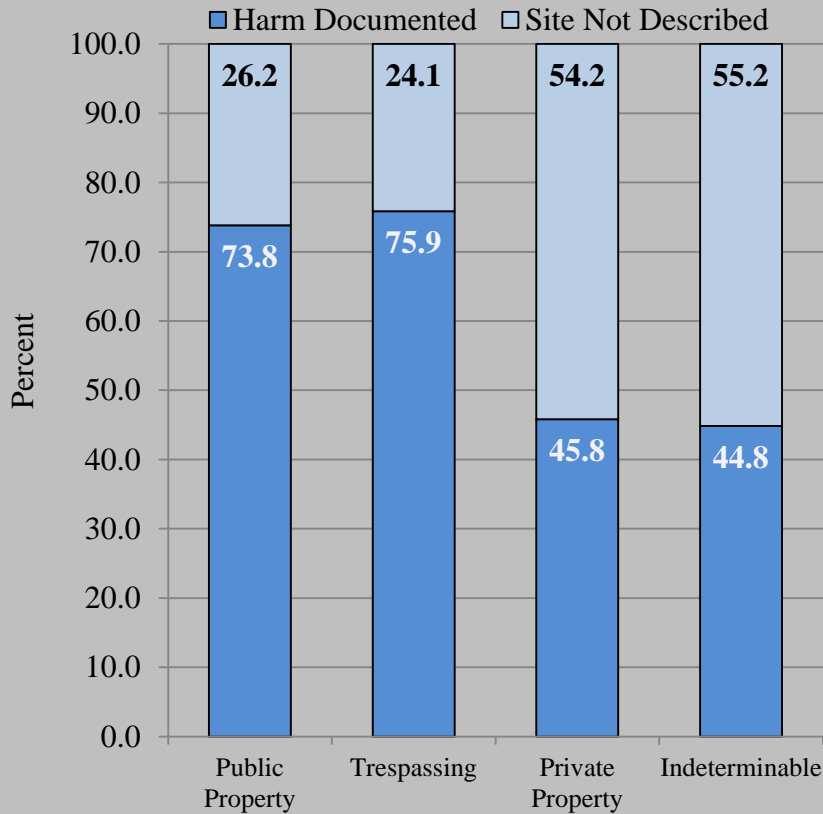
N=232



Only cases with complete guideline application information sentenced under USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life) or 2D1.14 (Narco-Terrorism) with a primary drug type of marijuana plants and sufficient information to determine type of grow site were included in this analysis (N=515).

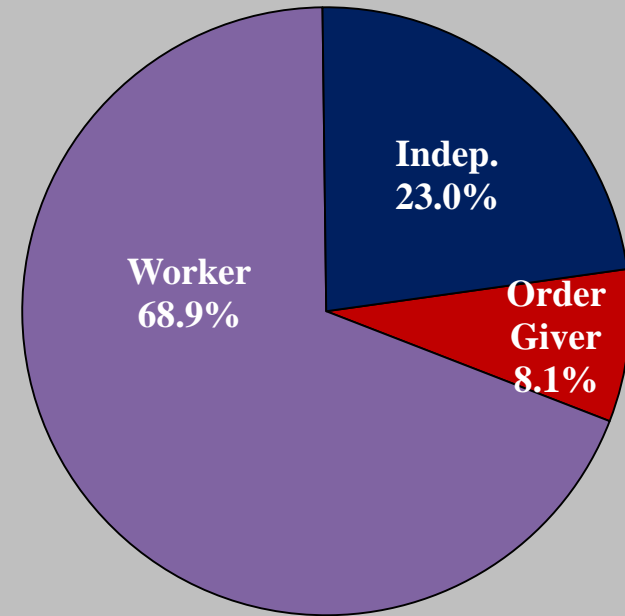
Environmental Harm at Outdoor Marijuana Grow Sites Fiscal Year 2012

Types of Outdoor Sites



Status of Offender When Harm was Documented

N=148

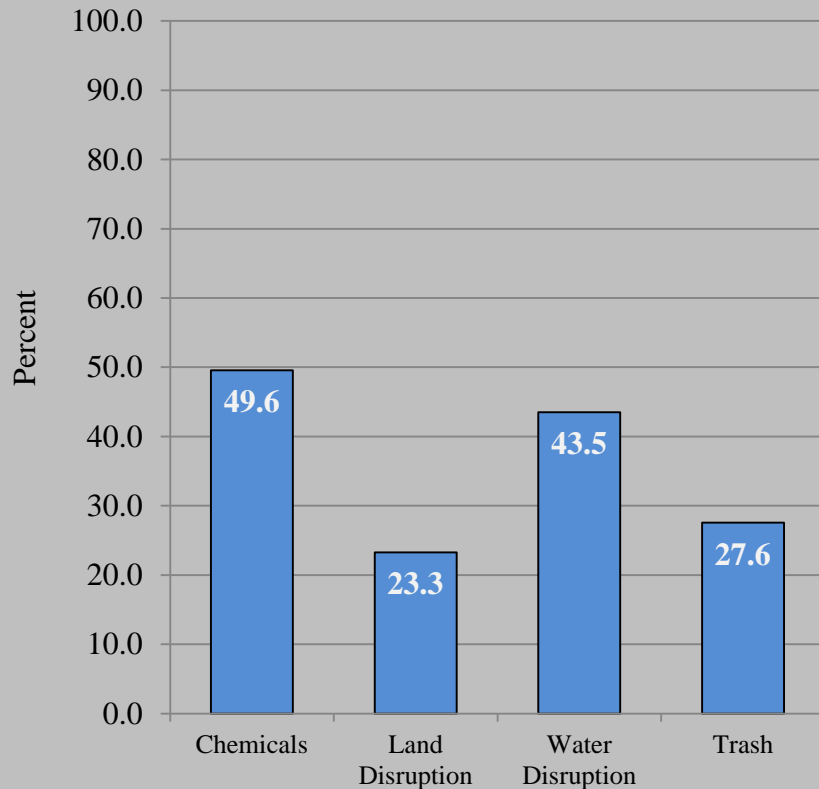


Only cases with complete guideline application information sentenced under USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life) or 2D1.14 (Narco-Terrorism) with a primary drug type of marijuana plants and sufficient information to determine type of grow site were included in this analysis (N=515). Of the 150 offenders with documented environmental harm, two offenders were excluded from the status of offender analysis due to missing information on the offender's status within the hierarchy.

SOURCE: U.S. Sentencing Commission, Marijuana Plants Special Coding Project.

Environmental Harm at Outdoor Marijuana Grow Sites Fiscal Year 2012

Types of Harm Cited



**Status of Offender When a
Given Type of Harm was
Documented**

	Order Giver	Worker	Indep.
Chemicals	8.9	64.6	26.6
Land Disruption	13.0	66.7	20.4
Water Disruption	4.0	76.0	20.0
Trash	4.7	87.5	7.8

Only cases with complete guideline application information sentenced under USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life) or 2D1.14 (Narco-Terrorism) with a primary drug type of marijuana plants and sufficient information to determine type of grow site were included in this analysis (N=515). Multiple harms may be cited in a single offense. Cases missing information for a given analysis were excluded from that analysis. Totals in the table may not sum to exactly 100.0% due to rounding.

SOURCE: U.S. Sentencing Commission, Marijuana Plants Special Coding Project.

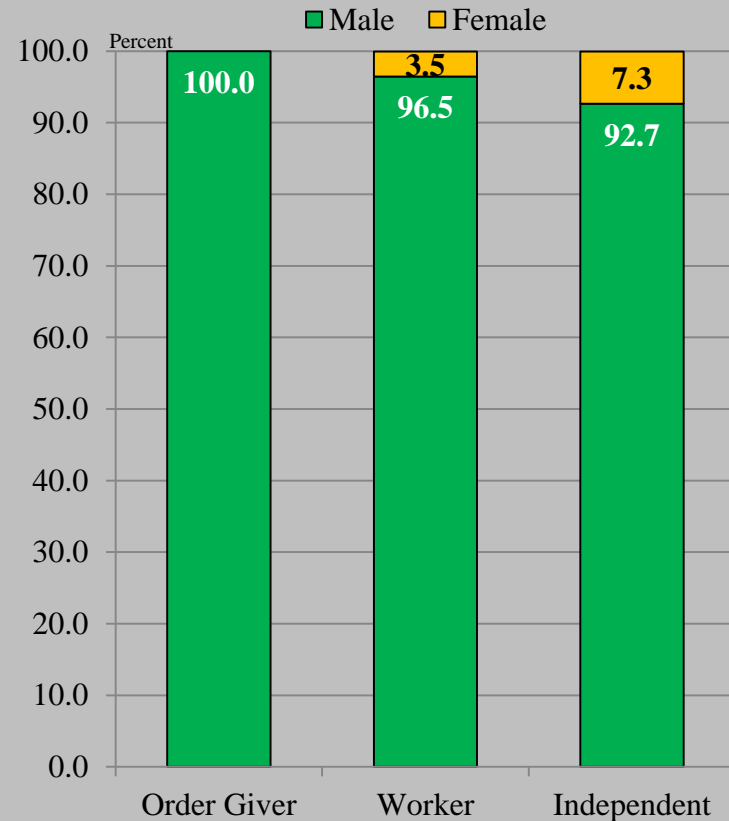
Gender of Offenders in Marijuana Grow Sites

Fiscal Year 2012

Indoor Sites



Outdoor Sites

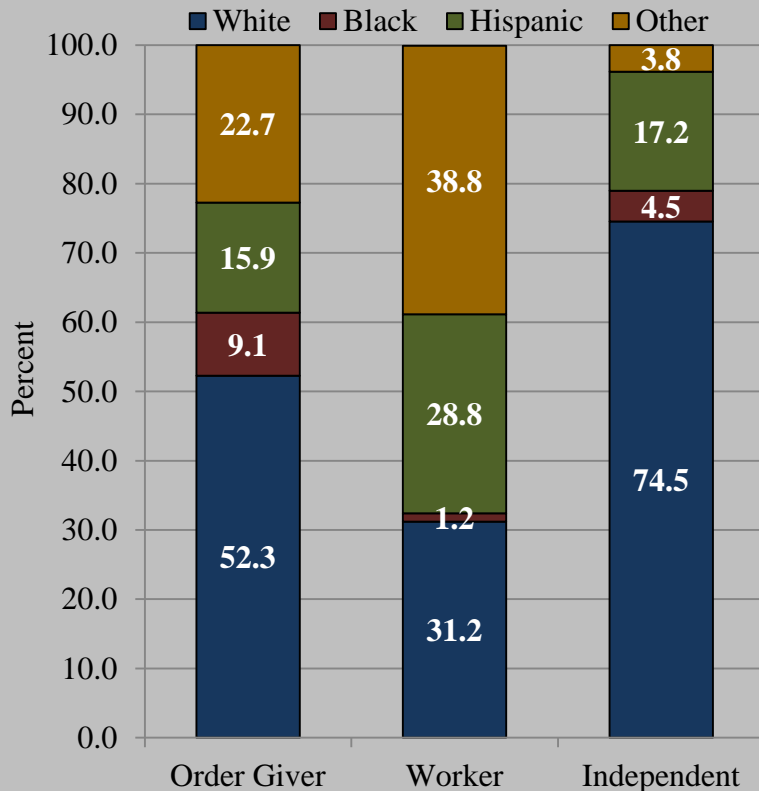


Only cases with complete guideline application information sentenced under USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life) or 2D1.14 (Narco-Terrorism) with a primary drug type of marijuana plants and sufficient information to determine type of grow site were included in this analysis (N=515). Cases missing information for a given analysis were excluded from that analysis.

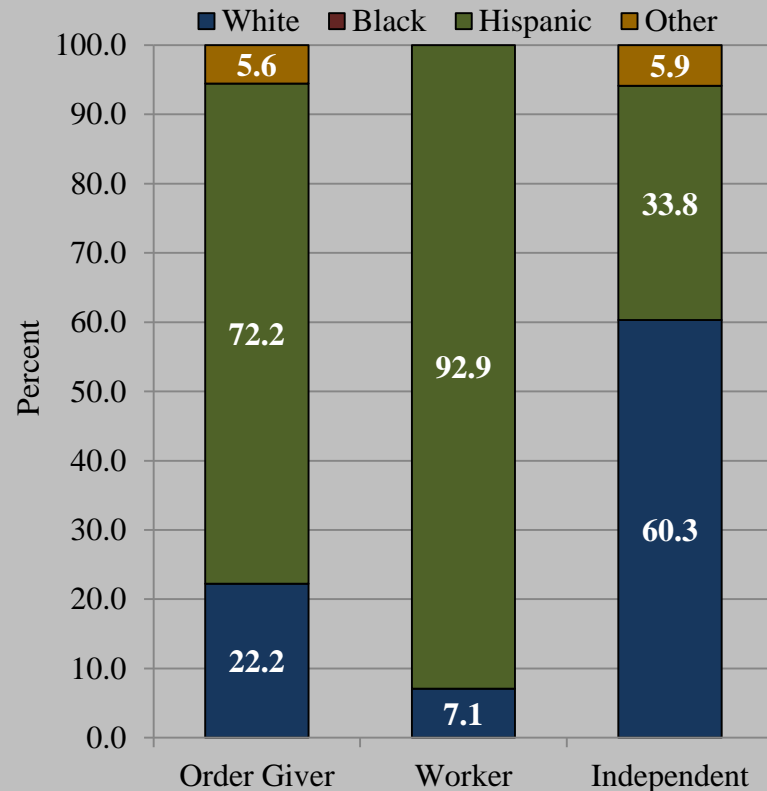
Race of Offenders in Marijuana Grow Sites

Fiscal Year 2012

Indoor Sites



Outdoor Sites

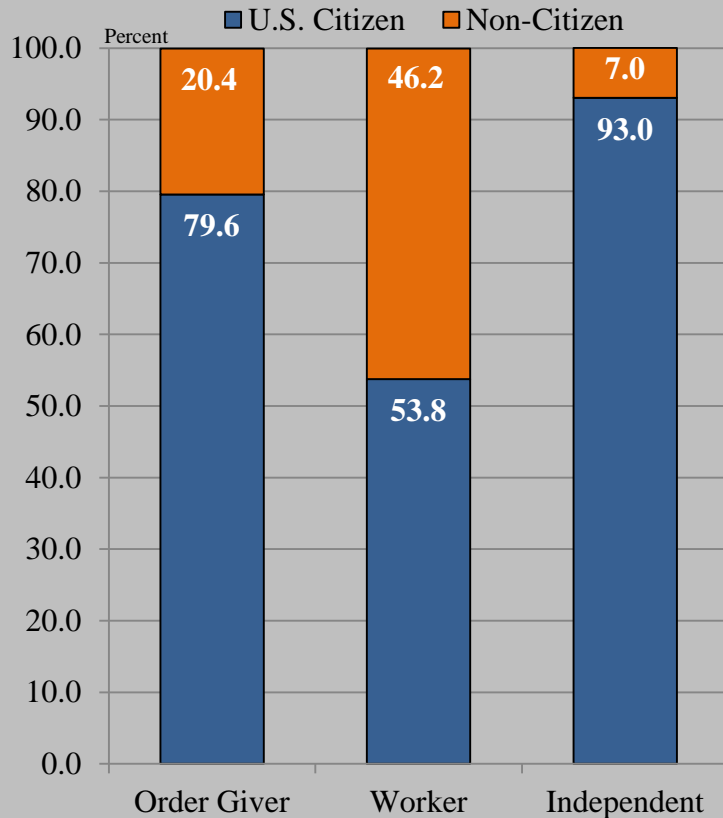


Only cases with complete guideline application information sentenced under USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life) or 2D1.14 (Narco-Terrorism) with a primary drug type of marijuana plants and sufficient information to determine type of grow site were included in this analysis (N=515). Cases missing information for a given analysis were excluded from that analysis.

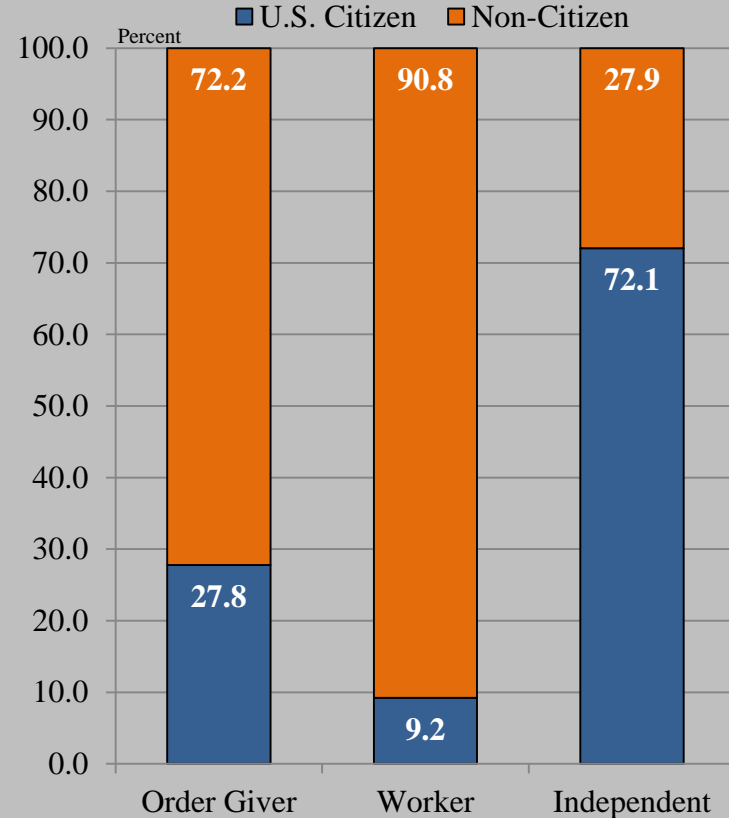
Citizenship of Offenders in Marijuana Grow Sites

Fiscal Year 2012

Indoor Sites



Outdoor Sites



Only cases with complete guideline application information sentenced under USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life) or 2D1.14 (Narco-Terrorism) with a primary drug type of marijuana plants and sufficient information to determine type of grow site were included in this analysis (N=515). Cases missing information for a given analysis were excluded from that analysis.

Selected Chapter Two Offense Characteristics of Offenders in Marijuana Grow Sites Fiscal Year 2012

Indoor Sites

	Order Giver	Worker	Indep.
Median BOL	25	23	18

	Order Giver	Worker	Indep.
Weapon SOC and/or 924(c)	30.2	6.3	21.5
Violence	0.0	0.0	0.0
Premises	43.8	7.6	36.8
Super Agg. Role	3.2	0.0	0.0
Super Mit. Role	0.0	0.0	0.0
Safety Valve	22.7	58.8	48.1

Outdoor Sites

	Order Giver	Worker	Indep.
Median BOL	27	30	18

	Order Giver	Worker	Indep.
Weapon SOC and/or 924(c)	38.9	48.2	36.8
Violence	0.0	0.0	0.0
Premises	11.8	0.0	10.8
Super Agg. Role	0.0	0.0	0.0
Super Mit. Role	0.0	1.4	0.0
Safety Valve	11.1	55.3	33.8

Only cases with complete guideline application information sentenced under USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life) or 2D1.14 (Narco-Terrorism) with a primary drug type of marijuana plants and sufficient information to determine type of grow site were included in this analysis (N=515). Cases missing information for a given analysis were excluded from that analysis.

Selected Drug Mandatory Minimum Information of Offenders in Marijuana Grow Sites Fiscal Year 2012

Indoor Sites

	Order Giver	Worker	Indep.
No Mandatory	11.4	25.0	31.7
60 Months	50.0	47.5	63.9
120 Months	34.1	27.5	4.4
240 Months	4.6	0.0	0.0

Outdoor Sites

	Order Giver	Worker	Indep.
No Mandatory	11.1	28.4	30.9
60 Months	38.9	15.6	55.9
120 Months	50.0	56.0	13.2
240 Months	0.0	0.0	0.0

	Order Giver	Worker	Indep.
§5K1.1 or Safety Valve	61.5	85.0	70.4

	Order Giver	Worker	Indep.
§5K1.1 or Safety Valve	25.0	76.2	51.1

Only cases with complete guideline application information sentenced under USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life) or 2D1.14 (Narco-Terrorism) with a primary drug type of marijuana plants and sufficient information to determine type of grow site were included in this analysis (N=515). Cases missing information for a given analysis were excluded from that analysis. The rate of relief from drug mandatory minimums is calculated only for those offenses in which a drug mandatory minimum was present. Relief exists when either a substantial assistance departure under §5K1.1 was received and/or safety valve was granted.

Selected Chapter Three and Four Offense Characteristics of Offenders in Marijuana Grow Sites Fiscal Year 2012

Indoor Sites

	Order Giver	Worker	Indep.
Aggravating Role	56.8	0.0	0.0
Mitigating Role	0.0	37.5	0.0
Acceptance	86.4	93.8	95.6

Outdoor Sites

	Order Giver	Worker	Indep.
Aggravating Role	66.7	0.0	0.0
Mitigating Role	0.0	64.5	0.0
Acceptance	88.9	98.6	94.1

	Order Giver	Worker	Indep.
Average CHC	II	II	II

	Order Giver	Worker	Indep.
Average CHC	I	I	II

Only cases with complete guideline application information sentenced under USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life) or 2D1.14 (Narco-Terrorism) with a primary drug type of marijuana plants and sufficient information to determine type of grow site were included in this analysis (N=515). Cases missing information for a given analysis were excluded from that analysis.

Sentence Position Relative to the Guideline Range for Offenders in Marijuana Grow Sites Fiscal Year 2012

Indoor Sites

	Order Giver	Worker	Indep.
Within Range	43.2	36.3	46.2
Above Range	2.3	1.3	1.3
§5K1.1	47.7	26.3	24.1
§5K3.1 (EDP)	0.0	0.0	0.0
Other Gov't Below	0.0	10.0	5.7
Non-Gov't Spons.	6.8	26.3	22.8

Outdoor Sites

	Order Giver	Worker	Indep.
Within Range	72.2	45.4	60.3
Above Range	0.0	1.4	2.9
§5K1.1	16.7	18.4	17.7
§5K3.1 (EDP)	0.0	0.7	0.0
Other Gov't Below	0.0	27.7	2.9
Non-Gov't Spons.	11.1	6.4	16.2

Only cases with complete guideline application information sentenced under USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life) or 2D1.14 (Narco-Terrorism) with a primary drug type of marijuana plants and sufficient information to determine type of grow site were included in this analysis (N=515). Cases missing information for a given analysis were excluded from that analysis. Totals may not sum to exactly 100.0% due to rounding.

Information on Sentence Imposed on Offenders in Marijuana Grow Sites Fiscal Year 2012

Indoor Sites

	Order Giver	Worker	Indep.
Prison Only	88.6	88.8	79.1
Prison + Confinement	6.8	3.8	9.5
Probation + Confinement	2.3	5.0	5.1
Probation Only	2.3	2.5	6.3

	Order Giver	Worker	Indep.
Average Prison Sentence (in months)	69	31	30

Outdoor Sites

	Order Giver	Worker	Indep.
Prison Only	94.4	97.2	85.3
Prison + Confinement	5.6	0.0	2.9
Probation + Confinement	0.0	0.0	4.4
Probation Only	0.0	2.8	7.4

	Order Giver	Worker	Indep.
Average Prison Sentence (in months)	104	50	55

Only cases with complete guideline application information sentenced under USSG §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life) or 2D1.14 (Narco-Terrorism) with a primary drug type of marijuana plants and sufficient information to determine type of grow site were included in this analysis (N=515). Cases missing information for a given analysis were excluded from that analysis. Totals may not sum to exactly 100.0% due to rounding. Cases with sentences of 470 months or greater (including life) were included in the sentence average computations as 470 months. In addition, the information presented in this figure excludes time of confinement as described in USSG §5C1.1 and sentences of probation.

Public Comment

- **The majority of public comment received by the Commission supported an increase for cultivation offenses, citing environmental harms and/or the deprivation of lawful use of the public or private land to the public or the landowner.**
- **Opponents of an amendment expressed concerns that an increase would impact only low-level workers and have no deterrent effect, and viewed the existing penalties as sufficient.**
- **Public Comment was received from:**
 - **Senator Feinstein**
 - **The Department of Justice**
 - **The Environmental Protection Agency**
 - **The U.S. Forest Service**
 - **The Federal Public Defenders**
 - **The Practitioners Advisory Group**
 - **Families Against Mandatory Minimums**
 - **The Sierra Club**
 - **Approximately one dozen California stakeholders**
 - **E.g.: Local officials, agricultural trade organizations, and logging trade organizations**

The Final Amendment

- **A new SOC was added at USSG §2D1.1(b)(14), which will become effective November 1, 2014:**

If (A) the offense involved the cultivation of marihuana on state or federal land or while trespassing on tribal or private land; and (B) the defendant receives an adjustment under §3B1.1 (Aggravating Role), increase by 2 levels.

Application of Subsection (b)(14).—Subsection (b)(14) applies to offenses that involve the cultivation of marihuana on state or federal land or while trespassing on tribal or private land. Such offenses interfere with the ability of others to safely access and use the area and also pose or risk a range of other harms, such as harms to the environment.

The enhancements in subsection (b)(13)(A) and (b)(14) may be applied cumulatively (added together), as is generally the case when two or more specific offense characteristics each apply. See §1B1.1 (Application Instructions), Application Note 4(A).

