

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

KRAIG TROTTER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

*On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit*

PETITION FOR WRIT OF CERTIORARI

APPENDIX VOLUME 1 – COURT OPINIONS, ORDERS, AND STATUTORY
PROVISIONS INVOLVED

KEVIN A. BUCHAN

KERDESHA DESIR

Counsel of Record

Buchan, Palo & Cardamone, LLC

750 Broad Street, Suite 202

Shrewsbury, New Jersey

732-328-8700 voice

732-328-9933 fax

kbuchan@bpclawnj.com

Counsel for Petitioner

INDEX TO APPENDIX VOLUME I

Third Circuit Judgment and Opinion in <i>United States v. Kraig Trotter</i> , No. 22-2639.....	App. A
District Court Judgment in <i>United States v. Kraig Trotter</i> , D.C. No. 3-21-cr-787-001	App. B
Statutory Provisions Involved	App C

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-2639

UNITED STATES OF AMERICA

v.

KRAIG M. TROTTER,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 3-21-cr-00787-001)
District Judge: Honorable Georgette Castner

Submitted Under Third Circuit L.A.R. 34.1(a)
on June 26, 2023

Before: JORDAN, KRAUSE, and MONTGOMERY-REEVES, *Circuit Judges*

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on June 26, 2023.

On consideration whereof, it is now hereby **ORDERED** and **ADJUDGED** by this Court that the order of the District Court entered on August 25, 2022, be and the same is hereby **AFFIRMED**. Costs shall not be taxed in this matter.

All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit

Clerk

DATE: July 7, 2023



Teste: *Patricia S. Dodszuweit*

Clerk, U.S. Court of Appeals for the Third Circuit

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-2639

UNITED STATES OF AMERICA

v.

KRAIG M. TROTTER,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 3-21-cr-00787-001)
District Judge: Honorable Georgette Castner

Submitted Under Third Circuit L.A.R. 34.1(a)
on June 26, 2023

Before: JORDAN, KRAUSE, and MONTGOMERY-REEVES, *Circuit Judges*

(Filed: July 7, 2023)

OPINION*

KRAUSE, *Circuit Judge*.

Kraig Trotter challenges the 121-month sentence he received after pleading guilty to possession with intent to distribute methamphetamine and conspiracy to possess with

* This disposition is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

intent to distribute methamphetamine, MDMA, and GBL.¹ Discerning no error, we will affirm.

I. DISCUSSION²

Although Trotter contests both the procedural and substantive reasonableness of his sentence, his objections are unavailing.

A sentence is procedurally reasonable if the district court properly calculated the applicable Sentencing Guidelines range, evaluated any motions for departure, and considered the 18 U.S.C. § 3553(a) factors. *Seibert*, 971 F.3d at 399. When a sentence is procedurally reasonable, it is substantively reasonable unless “no reasonable sentencing court would have imposed the same sentence on that particular defendant for the reasons the district court provided.” *United States v. Shah*, 43 F.4th 356, 367 (3d Cir. 2022) (quoting *United States v. Tomko*, 562 F.3d 558, 568 (3d Cir. 2009) (en banc)). And “if the sentence is within the applicable Guidelines range, we may presume it is reasonable.” *Pawlowski*, 27 F.4th at 912.

Trotter raises two challenges to the procedural reasonableness of his sentence. First, he contends the District Court erred in calculating his criminal history score for

¹ MDMA refers to 3,4-methylenedioxymethamphetamine and GBL refers to gamma-butyrolactone. See *Drug and Chemical Information*, DEA (last visited June 23, 2023), https://www.deadiversion.usdoj.gov/drug_chem_info/index.html.

² The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). In reviewing a sentence, we defer to a district court’s factual findings unless they are clearly erroneous and consider its legal rulings de novo. *United States v. Seibert*, 971 F.3d 396, 399 (3d Cir. 2020). We review the procedural and substantive reasonableness of a sentence for abuse of discretion. *United States v. Pawlowski*, 27 F.4th 897, 911 (3d Cir. 2022).

U.S.S.G. § 4A1.1 by including his 2010 conviction under New Jersey law for possessing a controlled substance and failing to deliver it to the nearest law enforcement officer. *See* N.J. Stat. Ann. § 2C:35-10(c). According to Trotter, the District Court should have excluded that conviction because New Jersey law categorizes that crime as a mere “disorderly persons offense,” *id.*, that “shall not give rise to any disability or legal disadvantage,” N.J. Stat. Ann. § 2C:1-4(b). But “[i]n determining what constitutes a ‘prior sentence’ under the Sentencing Guidelines, courts must look to federal, not state law.” *United States v. McKoy*, 452 F.3d 234, 237 (3d Cir. 2006). Federal law does not limit the consequences of disorderly persons offenses, so the District Court correctly included Trotter’s 2010 conviction when calculating his criminal history score.³

Second, Trotter asserts that the District Court failed to consider his struggles with mental illness and the conditions of his pre-trial detention. We disagree. The District Court explicitly acknowledged Trotter’s “mental health issues” and difficult “conditions of incarceration” when weighing the § 3553(a) factors. App. 171.

As Trotter’s sentence was both procedurally reasonable and within the Guidelines range, *see id.* at 149, we may presume that sentence was substantively reasonable, *Pawlowski*, 27 F.4th at 912. While Trotter argues that the District Court should have granted a downward variance based on his mental health and conditions of detention, “a

³ Trotter also suggests that this difference between federal and New Jersey law renders U.S.S.G. § 4A1.1 ambiguous, so the rule of lenity applies. But apart from his own confusion, Trotter has not offered any reason to conclude the text of § 4A1.1 is “so grievously ambiguous or uncertain as to implicate the rule of lenity.” *United States v. Lewis*, 58 F.4th 764, 771 (3d Cir. 2023). We therefore decline Trotter’s “invitation to apply the rule of lenity” here. *Id.* at 770.

district court's failure to give mitigating factors the weight a defendant contends they deserve does not make a sentence substantively unreasonable." *Seibert*, 971 F.3d at 402 (quotation and citation omitted).

Trotter's final challenge fares no better. He criticizes the Guidelines for treating methamphetamine so harshly; however, we will not "vacate a sentence within the Guidelines range due to policy disagreements with the Guidelines." *Id.* Accordingly, Trotter's substantive objections are meritless.

II. CONCLUSION

For the foregoing reasons, we will affirm the judgment of the District Court.

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK



UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET

PHILADELPHIA, PA 19106-1790

Website: www.ca3.uscourts.gov

TELEPHONE

215-597-2995

July 31, 2023

Melissa E. Rhoads
United States District Court for the District of New Jersey
Clarkson S. Fisher Federal Building and United States Courthouse
402 E State Street
Trenton, NJ 08608

RE: USA v. Kraig Trotter
Case Number: 22-2639
District Court Case Number: 3-21-cr-00787-001

Dear District Court Clerk,

Enclosed herewith is the certified judgment together with copy of the opinion in the above-captioned case. The certified judgment is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Counsel are advised of the issuance of the mandate by copy of this letter. The certified judgment or order is also enclosed showing costs taxed, if any.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

s/ pdb Case Manager

cc:

Kevin A. Buchan
Mark E. Coyne
Jane M. Dattilo
Steven G. Sanders

APPENDIX B

UNITED STATES DISTRICT COURT
District of New Jersey

UNITED STATES OF AMERICA

v.

CASE NUMBER 3:21-CR-00787-GC-1

KRAIG M. TROTTER

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)



The defendant, KRAIG M. TROTTER, was represented by KEVIN ARTHUR BUCHAN, CJA counsel.

On motion of the United States, the Court has dismissed Counts 1 & 2 of the Indictment.

The defendant pleaded guilty to Counts 1 & 2 of the SUPERSEDING INFORMATION on 4/21/2022. Accordingly, the court has adjudicated that the defendant is guilty of the following offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Numbers</u>
21:846	CONSPIRACY TO DISTRIBUTE CONTROLLED SUBSTANCE	7/2019 -12/2019	1s
21:841(a)(1) & (b)(1)(B)	CONTROLLED SUBSTANCE - SELL, DISTRIBUTE, OR DISPENSE	12/10/2019	2s

As pronounced on August 23, 2022, the defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must pay to the United States a total special assessment of \$200.00 for counts 1s & 2s, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material change in economic circumstances.

Signed this 23rd day of August, 2022.

Georgette Castner
United States District Judge

Defendant: KRAIG M. TROTTER
Case Number: 3:21-CR-00787-GC-1

Judgment - Page 2 of 6

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 121 months, on each of Counts 1s and 2s, to be served concurrently.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be designated for service of sentence in USP Lewisburg, in Lewisburg, PA. The Court also recommends the defendant participate in the RDAP program while in the custody of the BOP.

The defendant will remain in custody pending service of sentence.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ To _____
At _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: KRAIG M. TROTTER
Case Number: 3:21-CR-00787-GC-1

Judgment - Page 3 of 6

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of 4 years, on each of Counts 1s and 2s, all such terms to run concurrently.

Within 72 hours of release from custody of the Bureau of Prisons, you must report in person to the Probation Office in the district to which you are released.

While on supervised release, you must not commit another federal, state, or local crime, must refrain from any unlawful use of a controlled substance and must comply with the mandatory and standard conditions that have been adopted by this court as set forth below.

You must submit to one drug test within 15 days of commencement of supervised release and at least two tests thereafter as determined by the probation officer.

You must cooperate in the collection of DNA as directed by the probation officer

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it is a condition of supervised release that you pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release.

You must comply with the following special conditions:

ALCOHOL/DRUG TESTING AND TREATMENT

You must refrain from the illegal possession and use of drugs, including prescription medication not prescribed in your name, and the use of alcohol, and must submit to urinalysis or other forms of testing to ensure compliance. It is further ordered that you must submit to evaluation and treatment, on an outpatient or inpatient basis, as approved by the U.S. Probation Office. You must abide by the rules of any program and must remain in treatment until satisfactorily discharged by the Court. You must alert all medical professionals of any prior substance abuse history, including any prior history of prescription drug abuse. The U.S. Probation Office will supervise your compliance with this condition.

MENTAL HEALTH TREATMENT

You must undergo treatment in a mental health program approved by the U.S. Probation Office until discharged by the Court. As necessary, said treatment may also encompass treatment for gambling, domestic violence and/or anger management, or sex offense-specific treatment, as approved by the U.S. Probation Office, until discharged by the Court. The U.S. Probation Office will supervise your compliance with this condition.

SELF-EMPLOYMENT/BUSINESS DISCLOSURE

You must cooperate with the U.S. Probation Office in the investigation and approval of any position of self-employment, including any independent, entrepreneurial, or freelance employment or business activity. If approved for self-employment, you must provide the U.S. Probation Office with full disclosure of your self-employment and other business records, including, but not limited to, all of the records identified in the Probation Form 48F (Request for Self-Employment Records), or as otherwise requested by the U.S. Probation Office.

LIFE SKILLS/EDUCATION

As directed by the U.S. Probation Office, you must participate in and complete any educational, vocational, cognitive or any other enrichment programs offered by the U.S. Probation Office or any outside agency or establishment while under supervision.

Defendant: KRAIG M. TROTTER
Case Number: 3:21-CR-00787-GC-1

Judgment - Page 4 of 6

MOTOR VEHICLE COMPLIANCE

You must not operate any motor vehicle without a valid driver's license issued by the State of New Jersey, or in the state in which you are supervised. You must comply with all motor vehicle laws and ordinances and must report all motor vehicle infractions (including any court appearances) within 72 hours to the U.S. Probation Office.

Defendant: KRAIG M. TROTTER
Case Number: 3:21-CR-00787-GC-1

Judgment - Page 5 of 6

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
- 3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
- 4) You must answer truthfully the questions asked by your probation officer.
- 5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
- 7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have fulltime employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- 9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
- 10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- 11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

Defendant: KRAIG M. TROTTER
Case Number: 3:21-CR-00787-GC-1

Judgment - Page 6 of 6

STANDARD CONDITIONS OF SUPERVISION

13) You must follow the instructions of the probation officer related to the conditions of supervision.

For Official Use Only --- U.S. Probation Office

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed) _____
Defendant Date

U.S. Probation Officer/Designated Witness Date

DEFENDANT: KRAIG M. TROTTER
CASE NUMBER: 3:21-cr-00787-GC-1
DISTRICT: District of New Jersey

STATEMENT OF REASONS

(Not for Public Disclosure)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony and Class A misdemeanor cases.

I. COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

- A. ☐ The court adopts the presentence investigation report without change.
- B. ☒ The court adopts the presentence investigation report with the following changes. (Use Section VIII if necessary)
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report.)
1. ☐ Chapter Two of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to base offense level, or specific offense characteristics)
 2. ☐ Chapter Three of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility)
 3. ☒ Chapter Four of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to criminal history category or scores, career offender status, or criminal livelihood determinations)
Typographical error at No. 72: change criminal history score eight to seven.
 4. ☐ Additional Comments or Findings: (include comments or factual findings concerning any information in the presentence report, including information that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions; any other rulings on disputed portions of the presentence investigation report; identification of those portions of the report in dispute but for which a court determination is unnecessary because the matter will not affect sentencing or the court will not consider it)
- C. ☐ The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.
Applicable Sentencing Guideline: (if more than one guideline applies, list the guideline producing the highest offense level) _____

II.

COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply)

- A. ☒ One or more counts of conviction carry a mandatory minimum term of imprisonment and the sentence imposed is at or above the applicable mandatory minimum term.
- B. ☐ One or more counts of conviction carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum term does not apply based on:
- ☐ findings of fact in this case: (Specify)
 - ☐ substantial assistance (18 U.S.C. § 3553(e))
 - ☐ the statutory safety valve (18 U.S.C. § 3553(f))
- C. ☐ No count of conviction carries a mandatory minimum sentence.

III. COURT DETERMINATION OF GUIDELINE RANGE: (BEFORE DEPARTURES OR VARIANCES)

Total Offense Level: 29
Criminal History Category: IV
Guideline Range: (after application of §5G1.1 and §5G1.2) 121 to 151 months
Supervised Release Range: 4 to 5 years
Fine Range: \$ 30,000 to \$ 10,000,000

- ☒ Fine waived or below the guideline range because of inability to pay.

DEFENDANT: KRAIG M. TROTTER
CASE NUMBER: 3:21-cr-00787-GC-1
DISTRICT: District of New Jersey

STATEMENT OF REASONS

IV. GUIDELINE SENTENCING DETERMINATION *(Check all that apply)*

- A. ☐ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range does not exceed 24 months.
- B. ☒ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range exceeds 24 months, and the specific sentence is imposed for these reasons: *(Use Section VIII if necessary)*
Seriousness of offense, criminal history, and deterrence.
- C. ☐ The court departs from the guideline range for one or more reasons provided in the Guidelines Manual.
(Also complete Section V.)
- D. ☐ The court imposed a sentence otherwise outside the sentencing guideline system (i.e., a variance). *(Also complete Section VI)*

V. DEPARTURES PURSUANT TO THE GUIDELINES MANUAL *(If applicable)*

A. The sentence imposed departs: *(Check only one)*

- ☐ above the guideline range
☐ below the guideline range

B. Motion for departure before the court pursuant to: *(Check all that apply and specify reason(s) in sections C and D)*

1. Plea Agreement

- ☐ binding plea agreement for departure accepted by the court
☐ plea agreement for departure, which the court finds to be reasonable
☐ plea agreement that states that the government will not oppose a defense departure motion.

2. Motion Not Addressed in a Plea Agreement

- ☐ government motion for departure
☐ defense motion for departure to which the government did not object
☐ defense motion for departure to which the government objected
☐ joint motion by both parties

3. Other

- ☐ Other than a plea agreement or motion by the parties for departure

C. Reasons for departure: *(Check all that apply)*

- | | | |
|---|--|---|
| <input type="checkbox"/> 4A1.3 Criminal History Inadequacy | <input type="checkbox"/> 5K2.1 Death | <input type="checkbox"/> 5K2.12 Coercion and Duress |
| <input type="checkbox"/> 5H1.1 Age | <input type="checkbox"/> 5K2.2 Physical Injury | <input type="checkbox"/> 5K2.13 Diminished Capacity |
| <input type="checkbox"/> 5H1.2 Education and Vocational Skills | <input type="checkbox"/> 5K2.3 Extreme Psychological Injury | <input type="checkbox"/> 5K2.14 Public Welfare |
| <input type="checkbox"/> 5H1.3 Mental and Emotional Condition | <input type="checkbox"/> 5K2.4 Abduction or Unlawful Restraint | <input type="checkbox"/> 5K2.16 Voluntary Disclosure of Offense |
| <input type="checkbox"/> 5H1.4 Physical Condition | <input type="checkbox"/> 5K2.5 Property Damage or Loss | <input type="checkbox"/> 5K2.17 High-Capacity, Semiautomatic Weapon |
| <input type="checkbox"/> 5H1.5 Employment Record | <input type="checkbox"/> 5K2.6 Weapon | <input type="checkbox"/> 5K2.18 Violent Street Gang |
| <input type="checkbox"/> 5H1.6 Family Ties and Responsibilities | <input type="checkbox"/> 5K2.7 Disruption of Government Function | <input type="checkbox"/> 5K2.20 Aberrant Behavior |
| <input type="checkbox"/> 5H1.11 Military Service | <input type="checkbox"/> 5K2.8 Extreme Conduct | <input type="checkbox"/> 5K2.21 Dismissed and Uncharged Conduct |
| <input type="checkbox"/> 5H1.11 Charitable Service/Good Works | <input type="checkbox"/> 5K2.9 Criminal Purpose | <input type="checkbox"/> 5K2.22 Sex Offender Characteristics |
| <input type="checkbox"/> 5K1.1 Substantial Assistance | <input type="checkbox"/> 5K2.10 Victim's Conduct | <input type="checkbox"/> 5K2.23 Discharged Terms of Imprisonment |
| <input type="checkbox"/> 5K2.0 Aggravating/Mitigating Circumstances | <input type="checkbox"/> 5K2.11 Lesser Harm | <input type="checkbox"/> 5K2.24 Unauthorized Insignia |
| | | <input type="checkbox"/> 5K3.1 Early Disposition Program (EDP) |
- ☐ Other Guideline Reason(s) for Departure, to include departures pursuant to the commentary in the Guidelines Manual: *(see "List of Departure Provisions" following the Index in the Guidelines Manual.) (Please specify)*

D. State the basis for the departure. *(Use Section VIII if necessary)*

DEFENDANT: KRAIG M. TROTTER
CASE NUMBER: 3:21-cr-00787-GC-1
DISTRICT: District of New Jersey

STATEMENT OF REASONS

VI. COURT DETERMINATION FOR A VARIANCE *(If applicable)*

A. The sentence imposed is: *(Check only one)*

- ☐ above the guideline range
☐ below the guideline range

B. Motion for a variance before the court pursuant to: *(Check all that apply and specify reason(s) in sections C and D)*

1. Plea Agreement

- ☐ binding plea agreement for a variance accepted by the court
☐ plea agreement for a variance, which the court finds to be reasonable
☐ plea agreement that states that the government will not oppose a defense motion for a variance

2. Motion Not Addressed in a Plea Agreement

- ☐ government motion for a variance
☐ defense motion for a variance to which the government did not object
☐ defense motion for a variance to which the government objected
☐ joint motion by both parties

3. Other

- ☐ Other than a plea agreement or motion by the parties for a variance

C. 18 U.S.C. § 3553(a) and other reason(s) for a variance *(Check all that apply)*

- ☐ The nature and circumstances of the offense pursuant to 18 U.S.C. § 3553(a)(1)
☐ Mens Rea ☐ Extreme Conduct ☐ Dismissed/Uncharged Conduct
☐ Role in the Offense ☐ Victim Impact
☐ General Aggravating or Mitigating Factors *(Specify)* _____
☐ The history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)
☐ Aberrant Behavior ☐ Lack of Youthful Guidance
☐ Age ☐ Mental and Emotional Condition
☐ Charitable Service/Good Works ☐ Military Service
☐ Community Ties ☐ Non-Violent Offender
☐ Diminished Capacity ☐ Physical Condition
☐ Drug or Alcohol Dependence ☐ Pre-sentence Rehabilitation
☐ Employment Record ☐ Remorse/Lack of Remorse
☐ Family Ties and Responsibilities ☐ Other: *(Specify)* _____
☐ Issues with Criminal History: *(Specify)* _____
☐ To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))
☐ To afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))
☐ To protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))
☐ To provide the defendant with needed educational or vocational training (18 U.S.C. § 3553(a)(2)(D))
☐ To provide the defendant with medical care (18 U.S.C. § 3553(a)(2)(D))
☐ To provide the defendant with other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))
☐ To avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6)) *(Specify in section D)*
☐ To provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))
☐ Acceptance of Responsibility ☐ Conduct Pre-trial/On Bond ☐ Cooperation Without Government Motion for
☐ Early Plea Agreement ☐ Global Plea Agreement ☐ Departure
☐ Time Served *(not counted in sentence)* ☐ Waiver of Indictment ☐ Waiver of Appeal
☐ Policy Disagreement with the Guidelines *(Kimbrough v. U.S., 552 U.S. 85 (2007); (Specify)* _____
☐ Other: *(Specify)* _____

D. State the basis for a variance. *(Use Section VIII if necessary)*

DEFENDANT: KRAIG M. TROTTER
CASE NUMBER: 3:21-cr-00787-GC-1
DISTRICT: District of New Jersey

STATEMENT OF REASONS

VII. COURT DETERMINATIONS OF RESTITUTION

A. ☒ Restitution Not Applicable.

B. Total Amount of Restitution: \$ _____

C. Restitution not ordered: (Check only one)

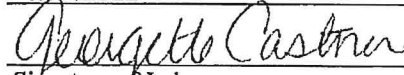
1. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
2. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
3. ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
4. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s)' losses were not ascertainable (18 U.S.C. § 3664(d)(5)).
5. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s) elected to not participate in any phase of determining the restitution order (18 U.S.C. § 3664(g)(1)).
6. ☐ Restitution is not ordered for other reasons. (Explain)

D. ☐ Partial restitution is ordered for these reasons (18 U.S.C. § 3553(c)):

VIII. ADDITIONAL BASIS FOR THE SENTENCE IN THIS CASE (If applicable)

Date of Imposition of Judgment

8/23/2022



Signature of Judge

GEORGETTE CASTNER, USDJ

Name and Title of Judge

Date Signed

8/23/2022

APPENDIX C

21 USC 841: Prohibited acts A

Text contains those laws in effect on October 3, 2023

From Title 21-FOOD AND DRUGS

CHAPTER 13-DRUG ABUSE PREVENTION AND CONTROL

SUBCHAPTER I-CONTROL AND ENFORCEMENT

Part D-Offenses and Penalties

Jump To:

[Source Credit](#)

[Miscellaneous](#)

[References In Text](#)

[Amendments](#)

[Effective Date](#)

§841. Prohibited acts A**(a) Unlawful acts**

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally-

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Penalties

Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving-

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of-

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- [1- (2-phenylethyl) -4-piperidiny] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$10,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$20,000,000 if the defendant is an individual or \$75,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 849, 859, 860, or 861 of this title after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years and fined in accordance with the preceding sentence. Notwithstanding section 3583 of title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term

of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving-

- (i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;
- (ii) 500 grams or more of a mixture or substance containing a detectable amount of-
 - (I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (II) cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 - (IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);
- (iii) 28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;
- (iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);
- (v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);
- (vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- [1- (2-phenylethyl) -4-piperidiny] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide;
- (vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or
- (viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$5,000,000 if the defendant is an individual or \$25,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$8,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C) In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillary J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$2,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D) In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an

individual or \$1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(E)(i) Except as provided in subparagraphs (C) and (D), in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 10 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 15 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$500,000 if the defendant is an individual or \$2,500,000 if the defendant is other than an individual, or both.

(ii) If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 30 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both.

(iii) Any sentence imposing a term of imprisonment under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$100,000 if the defendant is an individual or \$250,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 4 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$200,000 if the defendant is an individual or \$500,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph may, if there was a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment.

(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 844 of this title and section 3607 of title 18.

(5) Any person who violates subsection (a) of this section by cultivating or manufacturing a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed-

- (A) the amount authorized in accordance with this section;
- (B) the amount authorized in accordance with the provisions of title 18;
- (C) \$500,000 if the defendant is an individual; or
- (D) \$1,000,000 if the defendant is other than an individual;

or both.

(6) Any person who violates subsection (a), or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use-

- (A) creates a serious hazard to humans, wildlife, or domestic animals,
- (B) degrades or harms the environment or natural resources, or
- (C) pollutes an aquifer, spring, stream, river, or body of water,

shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

(7) PENALTIES FOR DISTRIBUTION.-

(A) IN GENERAL.-Whoever, with intent to commit a crime of violence, as defined in section 16 of title 18 (including rape), against an individual, violates subsection (a) by distributing a controlled substance or controlled substance analogue to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with title 18.

(B) DEFINITION.-For purposes of this paragraph, the term "without that individual's knowledge" means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.

(c) Offenses involving listed chemicals

Any person who knowingly or intentionally-

(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this subchapter;

(2) possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this subchapter; or

(3) with the intent of causing the evasion of the recordkeeping or reporting requirements of section 830 of this title, or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under that section is not required;

shall be fined in accordance with title 18 or imprisoned not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical, or both.

(d) Boobytraps on Federal property; penalties; "boobytrap" defined

(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years or fined under title 18, or both.

(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years or fined under title 18, or both.

(3) For the purposes of this subsection, the term "boobytrap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

(e) Ten-year injunction as additional penalty

In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years.

(f) Wrongful distribution or possession of listed chemicals

(1) Whoever knowingly distributes a listed chemical in violation of this subchapter (other than in violation of a recordkeeping or reporting requirement of section 830 of this title) shall, except to the extent that paragraph (12), (13), or (14) of section 842(a) of this title applies, be fined under title 18 or imprisoned not more than 5 years, or both.

(2) Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of section 830 of this title have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under title 18 or imprisoned not more than one year, or both.

(g) Internet sales of date rape drugs

(1) Whoever knowingly uses the Internet to distribute a date rape drug to any person, knowing or with reasonable cause to believe that-

(A) the drug would be used in the commission of criminal sexual conduct; or

(B) the person is not an authorized purchaser;

shall be fined under this subchapter or imprisoned not more than 20 years, or both.

(2) As used in this subsection:

(A) The term "date rape drug" means-

(i) gamma hydroxybutyric acid (GHB) or any controlled substance analogue of GHB, including gamma butyrolactone (GBL) or 1,4-butanediol;

(ii) ketamine;

(iii) flunitrazepam; or

(iv) any substance which the Attorney General designates, pursuant to the rulemaking procedures prescribed by section 553 of title 5, to be used in committing rape or sexual assault.

The Attorney General is authorized to remove any substance from the list of date rape drugs pursuant to the same rulemaking authority.

(B) The term "authorized purchaser" means any of the following persons, provided such person has acquired the controlled substance in accordance with this chapter:

(i) A person with a valid prescription that is issued for a legitimate medical purpose in the usual course of professional practice that is based upon a qualifying medical relationship by a practitioner registered by the Attorney General. A "qualifying medical relationship" means a medical relationship that exists when the practitioner

has conducted at least 1 medical evaluation with the authorized purchaser in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health ¹ professionals. The preceding sentence shall not be construed to imply that 1 medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

(ii) Any practitioner or other registrant who is otherwise authorized by their registration to dispense, procure, purchase, manufacture, transfer, distribute, import, or export the substance under this chapter.

(iii) A person or entity providing documentation that establishes the name, address, and business of the person or entity and which provides a legitimate purpose for using any "date rape drug" for which a prescription is not required.

(3) The Attorney General is authorized to promulgate regulations for record-keeping and reporting by persons handling 1,4-butanediol in order to implement and enforce the provisions of this section. Any record or report required by such regulations shall be considered a record or report required under this chapter.

(h) Offenses involving dispensing of controlled substances by means of the Internet

(1) In general

It shall be unlawful for any person to knowingly or intentionally-

(A) deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by this subchapter; or

(B) aid or abet (as such terms are used in section 2 of title 18) any activity described in subparagraph (A) that is not authorized by this subchapter.

(2) Examples

Examples of activities that violate paragraph (1) include, but are not limited to, knowingly or intentionally-

(A) delivering, distributing, or dispensing a controlled substance by means of the Internet by an online pharmacy that is not validly registered with a modification authorizing such activity as required by section 823(g) of this title (unless exempt from such registration);

(B) writing a prescription for a controlled substance for the purpose of delivery, distribution, or dispensation by means of the Internet in violation of section 829(e) of this title;

(C) serving as an agent, intermediary, or other entity that causes the Internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance in a manner not authorized by sections ² 823(g) or 829(e) of this title;

(D) offering to fill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire; and

(E) making a material false, fictitious, or fraudulent statement or representation in a notification or declaration under subsection (d) or (e), respectively, of section 831 of this title.

(3) Inapplicability

(A) This subsection does not apply to-

(i) the delivery, distribution, or dispensation of controlled substances by nonpractitioners to the extent authorized by their registration under this subchapter;

(ii) the placement on the Internet of material that merely advocates the use of a controlled substance or includes pricing information without attempting to propose or facilitate an actual transaction involving a controlled substance; or

(iii) except as provided in subparagraph (B), any activity that is limited to-

(I) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of title 47); or

(II) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of title 47 shall not constitute such selection or alteration of the content of the communication.

(B) The exceptions under subclauses (I) and (II) of subparagraph (A)(iii) shall not apply to a person acting in concert with a person who violates paragraph (1).

(4) Knowing or intentional violation

Any person who knowingly or intentionally violates this subsection shall be sentenced in accordance with subsection (b).

(Pub. L. 91–513, title II, §401, Oct. 27, 1970, 84 Stat. 1260 ; Pub. L. 95–633, title II, §201, Nov. 10, 1978, 92 Stat. 3774 ; Pub. L. 96–359, §8(c), Sept. 26, 1980, 94 Stat. 1194 ; Pub. L. 98–473, title II, §§224(a), 502, 503(b)(1), (2), Oct. 12, 1984, 98 Stat. 2030 , 2068, 2070; Pub. L. 99–570, title I, §§1002, 1003(a), 1004(a), 1005(a), 1103, title XV, §15005, Oct. 27, 1986, 100 Stat. 3207–2 , 3207–5, 3207–6, 3207–11, 3207–192; Pub. L. 100–690, title VI, §§6055, 6254(h), 6452(a), 6470(g), (h), 6479, Nov. 18, 1988, 102 Stat. 4318 , 4367, 4371, 4378, 4381; Pub. L. 101–647, title X, §1002(e), title XII, §1202, title XXXV, §3599K, Nov. 29, 1990, 104 Stat. 4828 , 4830, 4932; Pub. L. 103–322, title IX,

§90105(a), (c), title XVIII, §180201(b)(2)(A), Sept. 13, 1994, 108 Stat. 1987, 1988, 2047; Pub. L. 104–237, title II, §206(a), title III, §302(a), Oct. 3, 1996, 110 Stat. 3103, 3105; Pub. L. 104–305, §2(a), (b)(1), Oct. 13, 1996, 110 Stat. 3807; Pub. L. 105–277, div. E, §2(a), Oct. 21, 1998, 112 Stat. 2681–759; Pub. L. 106–172, §§3(b)(1), 5(b), 9, Feb. 18, 2000, 114 Stat. 9, 10, 13; Pub. L. 107–273, div. B, title III, §3005(a), title IV, §4002(d)(2)(A), Nov. 2, 2002, 116 Stat. 1805, 1809; Pub. L. 109–177, title VII, §§711(f)(1)(B), 732, Mar. 9, 2006, 120 Stat. 262, 270; Pub. L. 109–248, title II, §201, July 27, 2006, 120 Stat. 611; Pub. L. 110–425, §3(e), (f), Oct. 15, 2008, 122 Stat. 4828, 4829; Pub. L. 111–220, §2(a), 4(a), Aug. 3, 2010, 124 Stat. 2372; Pub. L. 115–391, title IV, §401(a)(2), Dec. 21, 2018, 132 Stat. 5220; Pub. L. 117–215, title I, §103(b)(1)(G), Dec. 2, 2022, 136 Stat. 2263.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (b)(1), (c)(1), (2), (f)(1), (g)(1), and (h)(1), (3)(A)(i), was in the original "this title", meaning title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the "Controlled Substances Act". For complete classification of title II to the Code, see second paragraph of Short Title note set out under section 801 of this title and Tables.

Schedules I, II, III, IV, and V, referred to in subsec. (b), are set out in section 812(c) of this title.

Section 3(a)(1)(B) of the Hillary J. Farias and Samantha Reid Date-Rape Prohibition Act of 2000, referred to in subsec. (b)(1)(C), is section 3(a)(1)(B) of Pub. L. 106–172, which is set out in a note under section 812 of this title.

This chapter, referred to in subsec. (g)(2)(B), (3), was in the original "this Act", meaning Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1236. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

AMENDMENTS

2022-Subsec. (h)(2). Pub. L. 117–215 substituted "823(g)" for "823(f)" in two places.

2018-Subsec. (b)(1)(A). Pub. L. 115–391, §401(a)(2)(A), in concluding provisions, substituted "If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years" for "If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years" and "after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years" for "after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release".

Subsec. (b)(1)(B). Pub. L. 115–391, §401(a)(2)(B), in concluding provisions, substituted "If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final" for "If any person commits such a violation after a prior conviction for a felony drug offense has become final".

2010-Subsec. (b)(1)(A). Pub. L. 111–220, §4(a)(1), in concluding provisions, substituted "\$10,000,000" for "\$4,000,000", "\$50,000,000" for "\$10,000,000", "\$20,000,000" for "\$8,000,000", and "\$75,000,000" for "\$20,000,000".

Subsec. (b)(1)(A)(iii). Pub. L. 111–220, §2(a)(1), substituted "280 grams" for "50 grams".

Subsec. (b)(1)(B). Pub. L. 111–220, §4(a)(2), in concluding provisions, substituted "\$5,000,000" for "\$2,000,000", "\$25,000,000" for "\$5,000,000", "\$8,000,000" for "\$4,000,000", and "\$50,000,000" for "\$10,000,000".

Subsec. (b)(1)(B)(iii). Pub. L. 111–220, §2(a)(2), substituted "28 grams" for "5 grams".

2008-Subsec. (b)(1)(D). Pub. L. 110–425, §3(e)(1)(A), struck out "or in the case of any controlled substance in schedule III (other than gamma hydroxybutyric acid), or 30 milligrams of flunitrazepam" after "hashish oil".

Subsec. (b)(1)(E). Pub. L. 110–425, §3(e)(1)(B), added subpar. (E).

Subsec. (b)(2). Pub. L. 110–425, §3(e)(2), substituted "5 years" for "3 years", "10 years" for "6 years", and "after a prior conviction for a felony drug offense has become final," for "after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final,".

Subsec. (b)(3). Pub. L. 110–425, §3(e)(3), substituted "4 years" for "2 years" and "after a prior conviction for a felony drug offense has become final," for "after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this subchapter or

subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final," and inserted at end "Any sentence imposing a term of imprisonment under this paragraph may, if there was a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment."

Subsec. (h). Pub. L. 110–425, §3(f), added subsec. (h).

2006-Subsec. (b)(5). Pub. L. 109–177, §732, inserted "or manufacturing" after "cultivating" in introductory provisions.

Subsec. (f)(1). Pub. L. 109–177, §711(f)(1)(B), inserted ", except to the extent that paragraph (12), (13), or (14) of section 842(a) of this title applies," after "shall".

Subsec. (g). Pub. L. 109–248 added subsec. (g).

2002-Subsec. (b)(1)(A), (B). Pub. L. 107–273, §3005(a), substituted "Notwithstanding section 3583 of title 18, any sentence" for "Any sentence" in concluding provisions.

Subsec. (b)(1)(C), (D). Pub. L. 107–273, §3005(a), substituted "Notwithstanding section 3583 of title 18, any sentence" for "Any sentence".

Subsec. (d)(1). Pub. L. 107–273, §4002(d)(2)(A)(i), substituted "or fined under title 18, or both" for "and shall be fined not more than \$10,000".

Subsec. (d)(2). Pub. L. 107–273, §4002(d)(2)(A)(ii), substituted "or fined under title 18, or both" for "and shall be fined not more than \$20,000".

2000-Subsec. (b)(1)(C). Pub. L. 106–172, §3(b)(1)(A), inserted "gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000)," after "schedule I or II," in first sentence.

Subsec. (b)(1)(D). Pub. L. 106–172, §3(b)(1)(B), substituted "(other than gamma hydroxybutyric acid), or 30" for ", or 30".

Subsec. (b)(7)(A). Pub. L. 106–172, §5(b), inserted "or controlled substance analogue" after "distributing a controlled substance".

Subsecs. (c) to (g). Pub. L. 106–172, §9, redesignated subsecs. (d) to (g) as (c) to (f), respectively.

1998-Subsec. (b)(1). Pub. L. 105–277 in subpar. (A)(viii) substituted "50 grams" and "500 grams" for "100 grams" and "1 kilogram", respectively, and in subpar. (B)(viii) substituted "5 grams" and "50 grams" for "10 grams" and "100 grams", respectively.

1996-Subsec. (b)(1)(C). Pub. L. 104–305, §2(b)(1)(A), inserted ", or 1 gram of flunitrazepam," after "schedule I or II".

Subsec. (b)(1)(D). Pub. L. 104–305, §2(b)(1)(B), inserted "or 30 milligrams of flunitrazepam," after "schedule III,".

Subsec. (b)(7). Pub. L. 104–305, §2(a), added par. (7).

Subsec. (d). Pub. L. 104–237, §302(a), in concluding provisions, substituted "not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical," for "not more than 10 years,".

Subsec. (f). Pub. L. 104–237, §206(a), inserted "manufacture, exportation," after "distribution," and struck out "regulated" after "engaging in any".

1994-Subsec. (b). Pub. L. 103–322, §180201(b)(2)(A), inserted "849," before "859," in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 103–322, §§90105(c), 180201(b)(2)(A), in concluding provisions, inserted "849," before "859," and struck out "For purposes of this subparagraph, the term 'felony drug offense' means an offense that is a felony under any provision of this subchapter or any other Federal law that prohibits or restricts conduct relating to narcotic drugs, marihuana, or depressant or stimulant substances or a felony under any law of a State or a foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, or depressant or stimulant substances." before "Any sentence under this subparagraph".

Subsec. (b)(1)(B). Pub. L. 103–322, §90105(a), in sentence in concluding provisions beginning "If any person commits", substituted "a prior conviction for a felony drug offense has become final" for "one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final".

Subsec. (b)(1)(C). Pub. L. 103–322, §90105(a), in sentence beginning "If any person commits", substituted "a prior conviction for a felony drug offense has become final" for "one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final".

Subsec. (b)(1)(D). Pub. L. 103–322, §90105(a), in sentence beginning "If any person commits", substituted "a prior conviction for a felony drug offense has become final" for "one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final".

1990-Subsec. (b). Pub. L. 101–647, §1002(e)(1), substituted "section 859, 860, or 861" for "section 845, 845a, or 845b" in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 101–647, §1002(e)(1), substituted "section 859, 860, or 861" for "section 845, 845a, or 845b" in concluding provisions.

Subsec. (b)(1)(A)(ii)(IV). Pub. L. 101–647, §3599K, substituted "any of the substances" for "any of the substance".

Subsec. (b)(1)(A)(viii). Pub. L. 101–647, §1202, substituted "or 1 kilogram or more of a mixture or substance containing a detectable amount of methamphetamine" for "or 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine".

Subsec. (b)(1)(B)(ii)(IV). Pub. L. 101–647, §3599K, substituted "any of the substances" for "any of the substance".

Subsec. (c). Pub. L. 101–647, §1002(e)(2), directed amendment of subsec. (c) by substituting "section 859, 860, or 861 of this title" for "section 845, 845a, or 845b of this title". Subsec. (c) was previously repealed by Pub. L. 98–473, §224(a)(2), as renumbered by Pub. L. 99–570, §1005(a), effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment. See 1984 Amendment note and Effective Date of 1984 Amendment note below.

1988-Subsec. (b)(1)(A). Pub. L. 100–690, §§6452(a), 6470(g), 6479(1), inserted ", or 1,000 or more marihuana plants regardless of weight" in cl. (vii), added cl. (viii), substituted "a prior conviction for a felony drug offense has become final" for "one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final" in second sentence, and added provisions relating to sentencing for a person who violates this subpar. or section 485, 485a, or 485b of this title after two or more prior convictions for a felony drug offense have become final and defining "felony drug offense".

Subsec. (b)(1)(B). Pub. L. 100–690, §§6470(h), 6479(2), inserted ", or 100 or more marihuana plants regardless of weight" in cl. (vii) and added cl. (viii).

Subsec. (b)(1)(D). Pub. L. 100–690, §6479(3), substituted "50 or more marihuana plants" for "100 or more marihuana plants".

Subsec. (b)(6). Pub. L. 100–690, §6254(h), added par. (6).

Subsec. (d). Pub. L. 100–690, §6055(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Any person who knowingly or intentionally-

"(1) possesses any piperidine with intent to manufacture phencyclidine except as authorized by this subchapter, or

"(2) possesses any piperidine knowing, or having reasonable cause to believe, that the piperidine will be used to manufacture phencyclidine except as authorized by this subchapter, shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both."

Subsecs. (f), (g). Pub. L. 100–690, §6055(b), added subsecs. (f) and (g).

1986-Pub. L. 99–570, §1005(a), amended Pub. L. 98–473, §224(a). See 1984 Amendment note below.

Subsec. (b). Pub. L. 99–570, §1103(a), substituted ", 845a, or 845b" for "or 845a" in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 99–570, §1002(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "In the case of a violation of subsection (a) of this section involving-

"(i) 100 grams or more of a controlled substance in schedule I or II which is a mixture or substance containing a detectable amount of a narcotic drug other than a narcotic drug consisting of-

"(I) coca leaves;

"(II) a compound, manufacture, salt, derivative, or preparation of coca leaves; or

"(III) a substance chemically identical thereto;

"(ii) a kilogram or more of any other controlled substance in schedule I or II which is a narcotic drug;

"(iii) 500 grams or more of phencyclidine (PCP); or

"(iv) 5 grams or more of lysergic acid diethylamide (LSD);

such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine of not more than \$250,000, or both. If any person commits such a violation after one or more prior convictions of him

for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 40 years, a fine of not more than \$500,000, or both".

Subsec. (b)(1)(B). Pub. L. 99-570, §1002(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A) and (C),, such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than \$125,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than \$250,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment."

Subsec. (b)(1)(C). Pub. L. 99-570, §1002(2), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(1)(D). Pub. L. 99-570, §1004(a), substituted "term of supervised release" for "special parole term" in two places.

Pub. L. 99-570, §§1002(1), 1003(a)(1), redesignated former subpar. (C) as (D), substituted "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual" for "a fine of not more than \$50,000" and "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual" for "a fine of not more than \$100,000", and inserted "except in the case of 100 or more marihuana plants regardless of weight,".

Subsec. (b)(2). Pub. L. 99-570, §1004(a), substituted "term of supervised release" for "special parole term" in two places.

Pub. L. 99-570, §1003(a)(2), substituted "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual" for "a fine of not more than \$25,000" and "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual" for "a fine of not more than \$50,000".

Subsec. (b)(3). Pub. L. 99-570, §1003(a)(3), substituted "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$100,000 if the defendant is an individual or \$250,000 if the defendant is other than an individual" for "a fine of not more than \$10,000" and "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$200,000 if the defendant is an individual or \$500,000 if the defendant is other than an individual" for "a fine of not more than \$20,000".

Subsec. (b)(4). Pub. L. 99-570, §1003(a)(4), which directed the substitution of "1(D)" for "1(C)" was executed by substituting "(1)(D)" for "(1)(C)" as the probable intent of Congress.

Subsec. (b)(5). Pub. L. 99-570, §1003(a)(5), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "Notwithstanding paragraph (1), any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be fined not more than-

"(A) \$500,000 if such person is an individual; and

"(B) \$1,000,000 if such person is not an individual."

Subsec. (c). Pub. L. 99-570, §1004(a), substituted "term of supervised release" for "special parole term" wherever appearing, effective Nov. 1, 1987, the effective date of the repeal of subsec. (c) by Pub. L. 98-473, §224(a)(2). See 1984 Amendment note below.

Pub. L. 99-570, §1103(b), substituted ", 845a, or 845b" for "845a" in two places.

Subsec. (d). Pub. L. 99-570, §1003(a)(6), substituted "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual" for "a fine of not more than \$15,000".

Subsec. (e). Pub. L. 99-570, §15005, added subsec. (e).

1984-Subsec. (b). Pub. L. 98-473, §503(b)(1), inserted reference to section 845a of this title in provisions preceding par. (1)(A).

Pub. L. 98-473, §224(a)(1)-(3), (5), which directed amendment of this subsection effective Nov. 1, 1987 (see section 235(a)(1) of Pub. L. 98-473 set out as an Effective Date note under section 3551 of Title 18,

Crimes and Criminal Procedure) was repealed by Pub. L. 99–570, §1005(a), and the remaining pars. (4) and (6) of Pub. L. 98–473, §224(a), were redesignated as pars. (1) and (2), respectively.

Subsec. (b)(1)(A). Pub. L. 98–473, §502(1)(A), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (b)(1)(B). Pub. L. 98–473, §502(1)(A), (B), redesignated former subpar. (A) as (B), substituted "except as provided in subparagraphs (A) and (C)," for "which is a narcotic drug", "\$125,000" for "\$25,000", and "\$250,000" for "\$50,000", and inserted references to laws of a State and a foreign country. Former subpar. (B) redesignated (C).

Subsec. (b)(1)(C). Pub. L. 98–473, §502(1)(A), (C), redesignated former subpar. (B) as (C), substituted "less than 50 kilograms of marihuana, 10 kilograms of hashish, or one kilogram of hashish oil" for "a controlled substance in schedule I or II which is not a narcotic drug", "and (5)" for ", (5), and (6)", "\$50,000" for "\$15,000", and "\$100,000" for "\$30,000", and inserted references to laws of a State and a foreign country.

Subsec. (b)(2). Pub. L. 98–473, §502(2), substituted "\$25,000" for "\$10,000" and "\$50,000" for "\$20,000", and inserted references to laws of a State or of a foreign country.

Subsec. (b)(3). Pub. L. 98–473, §502(3), substituted "\$10,000" for "\$5,000" and "\$20,000" for "\$10,000", and inserted references to laws of a State or of a foreign country.

Subsec. (b)(4). Pub. L. 98–473, §502(4), substituted "(1)(C)" for "(1)(B)".

Pub. L. 98–473, §224(a)(1), as renumbered by Pub. L. 99–570, §1005(a), substituted "in section 844 of this title and section 3607 of title 18" for "in subsections (a) and (b) of section 844 of this title".

Subsec. (b)(5). Pub. L. 98–473, §502(5), (6), added par. (5) and struck out former par. (5) which related to penalties for manufacturing, etc., phencyclidine.

Subsec. (b)(6). Pub. L. 98–473, §502(5), struck out par. (6) which related to penalties for violations involving a quantity of marihuana exceeding 1,000 pounds.

Subsec. (c). Pub. L. 98–473, §224(a)(2), as renumbered by Pub. L. 99–570, §1005(a), struck out subsec. (c) which read as follows: "A special parole term imposed under this section or section 845, 845a, or 845b of this title may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. A special parole term provided for in this section or section 845, 845a, or 845b of this title shall be in addition to, and not in lieu of, any other parole provided for by law."

Pub. L. 98–473, §503(b)(2), inserted reference to section 845a of this title in two places.

1980-Subsec. (b)(1)(B). Pub. L. 96–359, §8(c)(1), inserted reference to par. (6) of this subsection.

Subsec. (b)(6). Pub. L. 96–359, §8(c)(2), added par. (6).

1978-Subsec. (b)(1)(B). Pub. L. 95–633, §201(1), inserted ", except as provided in paragraphs (4) and (5) of this subsection," after "such person shall".

Subsec. (b)(5). Pub. L. 95–633, §201(2), added par. (5).

Subsec. (d). Pub. L. 95–633, §201(3), added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–391 applicable to any offense that was committed before Dec. 21, 2018, if a sentence for the offense has not been imposed as of Dec. 21, 2018, see section 401(c) of Pub. L. 115–391, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–425 effective 180 days after Oct. 15, 2008, except as otherwise provided, see section 3(j) of Pub. L. 110–425, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 6055 of Pub. L. 100–690 effective 120 days after Nov. 18, 1988, see section 6061 of Pub. L. 100–690, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–570, [title I](#), [§1004\(b\)](#), [Oct. 27, 1986](#), 100 Stat. 3207–6, provided that: "The amendments made by this section [amending this section and sections 845, 845a, 960, and 962 of this title] shall take effect on the date of the taking effect of section 3583 of title 18, United States Code [Nov. 1, 1987]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 224(a) of Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–633 effective Nov. 10, 1978, see section 203(a) of Pub. L. 95–633 set out as an Effective Date note under section 830 of this title.

EFFECTIVE DATE

Section effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91–513, set out as a note under section 801 of this title.

REPEALS

Pub. L. 96–359, §8(b), Sept. 26, 1980, 94 Stat. 1194, repealed section 203(d) of Pub. L. 95–633, which had provided for the repeal of subsec. (d) of this section effective Jan. 1, 1981.

APPLICATION OF FAIR SENTENCING ACT

Pub. L. 115–391, title IV, §404, Dec. 21, 2018, 132 Stat. 5222, provided that:

"(a) DEFINITION OF COVERED OFFENSE.—In this section, the term 'covered offense' means a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) [amending this section and sections 844 and 960 of this title], that was committed before August 3, 2010.

"(b) DEFENDANTS PREVIOUSLY SENTENCED.—A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) were in effect at the time the covered offense was committed.

"(c) LIMITATIONS.—No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act [Dec. 21, 2018], denied after a complete review of the motion on the merits. Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section."

¹ So in original. Probably should be "health".

² So in original. Probably should be "section".

21 USC 846: Attempt and conspiracy

Text contains those laws in effect on October 3, 2023

From Title 21-FOOD AND DRUGS

CHAPTER 13-DRUG ABUSE PREVENTION AND CONTROL

SUBCHAPTER I-CONTROL AND ENFORCEMENT

Part D-Offenses and Penalties

Jump To:

[Source Credit](#)

[Miscellaneous](#)

[Amendments](#)

[Effective Date](#)

§846. Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(Pub. L. 91–513, [title II](#), [§406](#), [Oct. 27, 1970](#), 84 Stat. 1265 ; Pub. L. 100–690, [title VI](#), [§6470\(a\)](#), [Nov. 18, 1988](#), 102 Stat. 4377 .)

EDITORIAL NOTES**AMENDMENTS**

1988-Pub. L. 100–690 substituted "shall be subject to the same penalties as those prescribed for the offense" for "is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense".

STATUTORY NOTES AND RELATED SUBSIDIARIES**EFFECTIVE DATE**

Section effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91–513, set out as a note under section 801 of this title.

PART D — OFFENSES INVOLVING DRUGS AND NARCO-TERRORISM

*Historical
Note*

Effective November 1, 1987. Amended effective November 1, 2007 (amendment 711).

1. UNLAWFUL MANUFACTURING, IMPORTING, EXPORTING, TRAFFICKING, OR POSSESSION; CONTINUING CRIMINAL ENTERPRISE

§2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy

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

- (1) **43**, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense; or
- (2) **38**, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or
- (3) **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 substance and that the defendant committed the offense after one or more prior convictions for a similar offense; or
- (4) **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; or
- (5) the offense level specified in the Drug Quantity Table set forth in subsection (c), except that if (A) the defendant receives an adjustment under §3B1.2 (Mitigating Role); and (B) the base offense level under subsection (c) is (i) level **32**, decrease by **2** levels; (ii) level **34** or level **36**, decrease by **3** levels; or (iii) level **38**, decrease by **4** levels. If the resulting offense level is greater than level **32** and the defendant receives the 4-level (“minimal participant”) reduction in §3B1.2(a), decrease to level **32**.

(b) Specific Offense Characteristics

- (1) If a dangerous weapon (including a firearm) was possessed, increase by **2** levels.
- (2) If the defendant used violence, made a credible threat to use violence, or directed the use of violence, increase by **2** levels.
- (3) If the defendant unlawfully imported or exported a controlled substance under circumstances in which (A) an aircraft other than a regularly scheduled commercial air carrier was used to import or export the controlled substance, (B) a submersible vessel or semi-submersible vessel as described in 18 U.S.C. § 2285 was used, or (C) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance, increase by **2** levels. If the resulting offense level is less than level **26**, increase to level **26**.
- (4) If the object of the offense was the distribution of a controlled substance in a prison, correctional facility, or detention facility, increase by **2** levels.
- (5) If (A) the offense involved the importation of amphetamine or methamphetamine or the manufacture of amphetamine or methamphetamine from listed chemicals that the defendant knew were imported unlawfully, and (B) the defendant is not subject to an adjustment under §3B1.2 (Mitigating Role), increase by **2** levels.
- (6) If the defendant is convicted under 21 U.S.C. § 865, increase by **2** levels.
- (7) If the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), distributed a controlled substance through mass-marketing by means of an interactive computer service, increase by **2** levels.
- (8) If the offense involved the distribution of an anabolic steroid and a masking agent, increase by **2** levels.
- (9) If the defendant distributed an anabolic steroid to an athlete, increase by **2** levels.
- (10) If the defendant was convicted under 21 U.S.C. § 841(g)(1)(A), increase by **2** levels.
- (11) If the defendant bribed, or attempted to bribe, a law enforcement officer to facilitate the commission of the offense, increase by **2** levels.

§2D1.1

- (12) If the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance, increase by **2** levels.
- (13) If the defendant knowingly misrepresented or knowingly marketed as another substance a mixture or substance containing fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide) or a fentanyl analogue, increase by **4** levels.
- (14) (Apply the greatest):
 - (A) If the offense involved (i) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (ii) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by **2** levels.
 - (B) If the defendant was convicted under 21 U.S.C. § 860a of distributing, or possessing with intent to distribute, methamphetamine on premises where a minor is present or resides, increase by **2** levels. If the resulting offense level is less than level **14**, increase to level **14**.
 - (C) If—
 - (i) the defendant was convicted under 21 U.S.C. § 860a of manufacturing, or possessing with intent to manufacture, methamphetamine on premises where a minor is present or resides; or
 - (ii) the offense involved the manufacture of amphetamine or methamphetamine and the offense created a substantial risk of harm to (I) human life other than a life described in subdivision (D); or (II) the environment,increase by **3** levels. If the resulting offense level is less than level **27**, increase to level **27**.
 - (D) If the offense (i) involved the manufacture of amphetamine or methamphetamine; and (ii) created a substantial risk of harm to the life of a minor or an incompetent, increase by **6** levels. If the resulting offense level is less than level **30**, increase to level **30**.
- (15) If (A) the offense involved the cultivation of marijuana 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.

(16) If the defendant receives an adjustment under §3B1.1 (Aggravating Role) and the offense involved 1 or more of the following factors:

- (A) (i) the defendant used fear, impulse, friendship, affection, or some combination thereof to involve another individual in the illegal purchase, sale, transport, or storage of controlled substances, (ii) the individual received little or no compensation from the illegal purchase, sale, transport, or storage of controlled substances, and (iii) the individual had minimal knowledge of the scope and structure of the enterprise;
- (B) the defendant, knowing that an individual was (i) less than 18 years of age, (ii) 65 or more years of age, (iii) pregnant, or (iv) unusually vulnerable due to physical or mental condition or otherwise particularly susceptible to the criminal conduct, distributed a controlled substance to that individual or involved that individual in the offense;
- (C) the defendant was directly involved in the importation of a controlled substance;
- (D) the defendant engaged in witness intimidation, tampered with or destroyed evidence, or otherwise obstructed justice in connection with the investigation or prosecution of the offense;
- (E) the defendant committed the offense as part of a pattern of criminal conduct engaged in as a livelihood,

increase by **2** levels.

(17) If the defendant receives the 4-level (“minimal participant”) reduction in §3B1.2(a) and the offense involved all of the following factors:

- (A) the defendant was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense;
- (B) the defendant received no monetary compensation from the illegal purchase, sale, transport, or storage of controlled substances; and
- (C) the defendant had minimal knowledge of the scope and structure of the enterprise,

decrease by **2** levels.

§2D1.1

- (18) If the defendant meets the criteria set forth in subdivisions (1)–(5) of subsection (a) of §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), decrease by **2** levels.

[Subsection (c) (Drug Quantity Table) is set forth after subsection (e) (Special Instruction).]

(d) Cross References

- (1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder) or §2A1.2 (Second Degree Murder), as appropriate, if the resulting offense level is greater than that determined under this guideline.
- (2) If the defendant was convicted under 21 U.S.C. § 841(b)(7) (of distributing a controlled substance with intent to commit a crime of violence), apply §2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to the crime of violence that the defendant committed, or attempted or intended to commit, if the resulting offense level is greater than that determined above.

(e) Special Instruction

- (1) If (A) subsection (d)(2) does not apply; and (B) the defendant committed, or attempted to commit, a sexual offense against another individual by distributing, with or without that individual's knowledge, a controlled substance to that individual, an adjustment under §3A1.1(b)(1) shall apply.

(c) DRUG QUANTITY TABLE

CONTROLLED SUBSTANCES AND QUANTITY*	BASE OFFENSE LEVEL
<p>(1) ● 90 KG or more of Heroin; ● 450 KG or more of Cocaine; ● 25.2 KG or more of Cocaine Base; ● 90 KG or more of PCP, or 9 KG or more of PCP (actual); ● 45 KG or more of Methamphetamine, or 4.5 KG or more of Methamphetamine (actual), or 4.5 KG or more of “Ice”; ● 45 KG or more of Amphetamine, or 4.5 KG or more of Amphetamine (actual); ● 900 G or more of LSD; ● 36 KG or more of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide); ● 9 KG or more of a Fentanyl Analogue; ● 90,000 KG or more of Marihuana; ● 18,000 KG or more of Hashish; ● 1,800 KG or more of Hashish Oil; ● 90,000,000 units or more of Ketamine; ● 90,000,000 units or more of Schedule I or II Depressants; ● 5,625,000 units or more of Flunitrazepam; ● 90,000 KG or more of Converted Drug Weight.</p>	Level 38
<p>(2) ● At least 30 KG but less than 90 KG of Heroin; ● At least 150 KG but less than 450 KG of Cocaine; ● At least 8.4 KG but less than 25.2 KG of Cocaine Base; ● At least 30 KG but less than 90 KG of PCP, or at least 3 KG but less than 9 KG of PCP (actual); ● At least 15 KG but less than 45 KG of Methamphetamine, or at least 1.5 KG but less than 4.5 KG of Methamphetamine (actual), or at least 1.5 KG but less than 4.5 KG of “Ice”; ● At least 15 KG but less than 45 KG of Amphetamine, or at least 1.5 KG but less than 4.5 KG of Amphetamine (actual); ● At least 300 G but less than 900 G of LSD; ● At least 12 KG but less than 36 KG of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide); ● At least 3 KG but less than 9 KG of a Fentanyl Analogue; ● At least 30,000 KG but less than 90,000 KG of Marihuana; ● At least 6,000 KG but less than 18,000 KG of Hashish; ● At least 600 KG but less than 1,800 KG of Hashish Oil; ● At least 30,000,000 units but less than 90,000,000 units of Ketamine; ● At least 30,000,000 units but less than 90,000,000 units of Schedule I or II Depressants; ● At least 1,875,000 units but less than 5,625,000 units of Flunitrazepam; ● At least 30,000 KG but less than 90,000 KG of Converted Drug Weight.</p>	Level 36
<p>(3) ● At least 10 KG but less than 30 KG of Heroin; ● At least 50 KG but less than 150 KG of Cocaine; ● At least 2.8 KG but less than 8.4 KG of Cocaine Base; ● At least 10 KG but less than 30 KG of PCP, or at least 1 KG but less than 3 KG of PCP (actual); ● At least 5 KG but less than 15 KG of Methamphetamine, or</p>	Level 34

§2D1.1

- at least 500 G but less than 1.5 KG of Methamphetamine (actual), or
at least 500 G but less than 1.5 KG of “Ice”;
- At least 5 KG but less than 15 KG of Amphetamine, or
at least 500 G but less than 1.5 KG of Amphetamine (actual);
- At least 100 G but less than 300 G of LSD;
- At least 4 KG but less than 12 KG of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]
Propanamide);
- At least 1 KG but less than 3 KG of a Fentanyl Analogue;
- At least 10,000 KG but less than 30,000 KG of Marihuana;
- At least 2,000 KG but less than 6,000 KG of Hashish;
- At least 200 KG but less than 600 KG of Hashish Oil;
- At least 10,000,000 but less than 30,000,000 units of Ketamine;
- At least 10,000,000 but less than 30,000,000 units of Schedule I or II Depressants;
- At least 625,000 but less than 1,875,000 units of Flunitrazepam;
- At least 10,000 KG but less than 30,000 KG of **Converted Drug Weight**.

- | | | |
|-----|--|-----------------|
| (4) | <ul style="list-style-type: none">● At least 3 KG but less than 10 KG of Heroin;● At least 15 KG but less than 50 KG of Cocaine;● At least 840 G but less than 2.8 KG of Cocaine Base;● At least 3 KG but less than 10 KG of PCP, or
at least 300 G but less than 1 KG of PCP (actual);● At least 1.5 KG but less than 5 KG of Methamphetamine, or
at least 150 G but less than 500 G of Methamphetamine (actual), or
at least 150 G but less than 500 G of “Ice”;● At least 1.5 KG but less than 5 KG of Amphetamine, or
at least 150 G but less than 500 G of Amphetamine (actual);● At least 30 G but less than 100 G of LSD;● At least 1.2 KG but less than 4 KG of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]
Propanamide);● At least 300 G but less than 1 KG of a Fentanyl Analogue;● At least 3,000 KG but less than 10,000 KG of Marihuana;● At least 600 KG but less than 2,000 KG of Hashish;● At least 60 KG but less than 200 KG of Hashish Oil;● At least 3,000,000 but less than 10,000,000 units of Ketamine;● At least 3,000,000 but less than 10,000,000 units of Schedule I or II Depressants;● At least 187,500 but less than 625,000 units of Flunitrazepam;● At least 3,000 KG but less than 10,000 KG of Converted Drug Weight. | Level 32 |
|-----|--|-----------------|

- | | | |
|-----|---|-----------------|
| (5) | <ul style="list-style-type: none">● At least 1 KG but less than 3 KG of Heroin;● At least 5 KG but less than 15 KG of Cocaine;● At least 280 G but less than 840 G of Cocaine Base;● At least 1 KG but less than 3 KG of PCP, or
at least 100 G but less than 300 G of PCP (actual);● At least 500 G but less than 1.5 KG of Methamphetamine, or
at least 50 G but less than 150 G of Methamphetamine (actual), or
at least 50 G but less than 150 G of “Ice”;● At least 500 G but less than 1.5 KG of Amphetamine, or
at least 50 G but less than 150 G of Amphetamine (actual);● At least 10 G but less than 30 G of LSD;● At least 400 G but less than 1.2 KG of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]
Propanamide);● At least 100 G but less than 300 G of a Fentanyl Analogue;● At least 1,000 KG but less than 3,000 KG of Marihuana; | Level 30 |
|-----|---|-----------------|

- At least 200 KG but less than 600 KG of Hashish;
- At least 20 KG but less than 60 KG of Hashish Oil;
- At least 1,000,000 but less than 3,000,000 units of Ketamine;
- At least 1,000,000 but less than 3,000,000 units of Schedule I or II Depressants;
- At least 62,500 but less than 187,500 units of Flunitrazepam;
- At least 1,000 KG but less than 3,000 KG of **Converted Drug Weight**.

- | | | |
|-----|---|-----------------|
| (6) | <ul style="list-style-type: none"> ● At least 700 G but less than 1 KG of Heroin; ● At least 3.5 KG but less than 5 KG of Cocaine; ● At least 196 G but less than 280 G of Cocaine Base; ● At least 700 G but less than 1 KG of PCP, or
at least 70 G but less than 100 G of PCP (actual); ● At least 350 G but less than 500 G of Methamphetamine, or
at least 35 G but less than 50 G of Methamphetamine (actual), or
at least 35 G but less than 50 G of “Ice”; ● At least 350 G but less than 500 G of Amphetamine, or
at least 35 G but less than 50 G of Amphetamine (actual); ● At least 7 G but less than 10 G of LSD; ● At least 280 G but less than 400 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]
Propanamide); ● At least 70 G but less than 100 G of a Fentanyl Analogue; ● At least 700 KG but less than 1,000 KG of Marihuana; ● At least 140 KG but less than 200 KG of Hashish; ● At least 14 KG but less than 20 KG of Hashish Oil; ● At least 700,000 but less than 1,000,000 units of Ketamine; ● At least 700,000 but less than 1,000,000 units of Schedule I or II Depressants; ● At least 43,750 but less than 62,500 units of Flunitrazepam; ● At least 700 KG but less than 1,000 KG of Converted Drug Weight. | Level 28 |
|-----|---|-----------------|

- | | | |
|-----|--|-----------------|
| (7) | <ul style="list-style-type: none"> ● At least 400 G but less than 700 G of Heroin; ● At least 2 KG but less than 3.5 KG of Cocaine; ● At least 112 G but less than 196 G of Cocaine Base; ● At least 400 G but less than 700 G of PCP, or
at least 40 G but less than 70 G of PCP (actual); ● At least 200 G but less than 350 G of Methamphetamine, or
at least 20 G but less than 35 G of Methamphetamine (actual), or
at least 20 G but less than 35 G of “Ice”; ● At least 200 G but less than 350 G of Amphetamine, or
at least 20 G but less than 35 G of Amphetamine (actual); ● At least 4 G but less than 7 G of LSD; ● At least 160 G but less than 280 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]
Propanamide); ● At least 40 G but less than 70 G of a Fentanyl Analogue; ● At least 400 KG but less than 700 KG of Marihuana; ● At least 80 KG but less than 140 KG of Hashish; ● At least 8 KG but less than 14 KG of Hashish Oil; ● At least 400,000 but less than 700,000 units of Ketamine; ● At least 400,000 but less than 700,000 units of Schedule I or II Depressants; ● At least 25,000 but less than 43,750 units of Flunitrazepam; ● At least 400 KG but less than 700 KG of Converted Drug Weight. | Level 26 |
|-----|--|-----------------|

§2D1.1

- (8) **Level 24**
- At least 100 G but less than 400 G of Heroin;
 - At least 500 G but less than 2 KG of Cocaine;
 - At least 28 G but less than 112 G of Cocaine Base;
 - At least 100 G but less than 400 G of PCP, or at least 10 G but less than 40 G of PCP (actual);
 - At least 50 G but less than 200 G of Methamphetamine, or at least 5 G but less than 20 G of Methamphetamine (actual), or at least 5 G but less than 20 G of “Ice”;
 - At least 50 G but less than 200 G of Amphetamine, or at least 5 G but less than 20 G of Amphetamine (actual);
 - At least 1 G but less than 4 G of LSD;
 - At least 40 G but less than 160 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
 - At least 10 G but less than 40 G of a Fentanyl Analogue;
 - At least 100 KG but less than 400 KG of Marihuana;
 - At least 20 KG but less than 80 KG of Hashish;
 - At least 2 KG but less than 8 KG of Hashish Oil;
 - At least 100,000 but less than 400,000 units of Ketamine;
 - At least 100,000 but less than 400,000 units of Schedule I or II Depressants;
 - At least 6,250 but less than 25,000 units of Flunitrazepam;
 - At least 100 KG but less than 400 KG of *Converted Drug Weight*.

- (9) **Level 22**
- At least 80 G but less than 100 G of Heroin;
 - At least 400 G but less than 500 G of Cocaine;
 - At least 22.4 G but less than 28 G of Cocaine Base;
 - At least 80 G but less than 100 G of PCP, or at least 8 G but less than 10 G of PCP (actual);
 - At least 40 G but less than 50 G of Methamphetamine, or at least 4 G but less than 5 G of Methamphetamine (actual), or at least 4 G but less than 5 G of “Ice”;
 - At least 40 G but less than 50 G of Amphetamine, or at least 4 G but less than 5 G of Amphetamine (actual);
 - At least 800 MG but less than 1 G of LSD;
 - At least 32 G but less than 40 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
 - At least 8 G but less than 10 G of a Fentanyl Analogue;
 - At least 80 KG but less than 100 KG of Marihuana;
 - At least 16 KG but less than 20 KG of Hashish;
 - At least 1.6 KG but less than 2 KG of Hashish Oil;
 - At least 80,000 but less than 100,000 units of Ketamine;
 - At least 80,000 but less than 100,000 units of Schedule I or II Depressants;
 - At least 5,000 but less than 6,250 units of Flunitrazepam;
 - At least 80 KG but less than 100 KG of *Converted Drug Weight*.

- (10) **Level 20**
- At least 60 G but less than 80 G of Heroin;
 - At least 300 G but less than 400 G of Cocaine;
 - At least 16.8 G but less than 22.4 G of Cocaine Base;
 - At least 60 G but less than 80 G of PCP, or at least 6 G but less than 8 G of PCP (actual);
 - At least 30 G but less than 40 G of Methamphetamine, or at least 3 G but less than 4 G of Methamphetamine (actual), or at least 3 G but less than 4 G of “Ice”;
 - At least 30 G but less than 40 G of Amphetamine, or

- at least 3 G but less than 4 G of Amphetamine (actual);
- At least 600 MG but less than 800 MG of LSD;
- At least 24 G but less than 32 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
- At least 6 G but less than 8 G of a Fentanyl Analogue;
- At least 60 KG but less than 80 KG of Marihuana;
- At least 12 KG but less than 16 KG of Hashish;
- At least 1.2 KG but less than 1.6 KG of Hashish Oil;
- At least 60,000 but less than 80,000 units of Ketamine;
- At least 60,000 but less than 80,000 units of Schedule I or II Depressants;
- 60,000 units or more of Schedule III substances (except Ketamine);
- At least 3,750 but less than 5,000 units of Flunitrazepam;
- At least 60 KG but less than 80 KG of **Converted Drug Weight**.

- (11) **Level 18**
- At least 40 G but less than 60 G of Heroin;
 - At least 200 G but less than 300 G of Cocaine;
 - At least 11.2 G but less than 16.8 G of Cocaine Base;
 - At least 40 G but less than 60 G of PCP, or
at least 4 G but less than 6 G of PCP (actual);
 - At least 20 G but less than 30 G of Methamphetamine, or
at least 2 G but less than 3 G of Methamphetamine (actual), or
at least 2 G but less than 3 G of “Ice”;
 - At least 20 G but less than 30 G of Amphetamine, or
at least 2 G but less than 3 G of Amphetamine (actual);
 - At least 400 MG but less than 600 MG of LSD;
 - At least 16 G but less than 24 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
 - At least 4 G but less than 6 G of a Fentanyl Analogue;
 - At least 40 KG but less than 60 KG of Marihuana;
 - At least 8 KG but less than 12 KG of Hashish;
 - At least 800 G but less than 1.2 KG of Hashish Oil;
 - At least 40,000 but less than 60,000 units of Ketamine;
 - At least 40,000 but less than 60,000 units of Schedule I or II Depressants;
 - At least 40,000 but less than 60,000 units of Schedule III substances (except Ketamine);
 - At least 2,500 but less than 3,750 units of Flunitrazepam;
 - At least 40 KG but less than 60 KG of **Converted Drug Weight**.

- (12) **Level 16**
- At least 20 G but less than 40 G of Heroin;
 - At least 100 G but less than 200 G of Cocaine;
 - At least 5.6 G but less than 11.2 G of Cocaine Base;
 - At least 20 G but less than 40 G of PCP, or
at least 2 G but less than 4 G of PCP (actual);
 - At least 10 G but less than 20 G of Methamphetamine, or
at least 1 G but less than 2 G of Methamphetamine (actual), or
at least 1 G but less than 2 G of “Ice”;
 - At least 10 G but less than 20 G of Amphetamine, or
at least 1 G but less than 2 G of Amphetamine (actual);
 - At least 200 MG but less than 400 MG of LSD;
 - At least 8 G but less than 16 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
 - At least 2 G but less than 4 G of a Fentanyl Analogue;
 - At least 20 KG but less than 40 KG of Marihuana;
 - At least 5 KG but less than 8 KG of Hashish;

§2D1.1

- At least 500 G but less than 800 G of Hashish Oil;
- At least 20,000 but less than 40,000 units of Ketamine;
- At least 20,000 but less than 40,000 units of Schedule I or II Depressants;
- At least 20,000 but less than 40,000 units of Schedule III substances (except Ketamine);
- At least 1,250 but less than 2,500 units of Flunitrazepam;
- At least 20 KG but less than 40 KG of **Converted Drug Weight**.

- (13) **Level 14**
- At least 10 G but less than 20 G of Heroin;
 - At least 50 G but less than 100 G of Cocaine;
 - At least 2.8 G but less than 5.6 G of Cocaine Base;
 - At least 10 G but less than 20 G of PCP, or
at least 1 G but less than 2 G of PCP (actual);
 - At least 5 G but less than 10 G of Methamphetamine, or
at least 500 MG but less than 1 G of Methamphetamine (actual), or
at least 500 MG but less than 1 G of “Ice”;
 - At least 5 G but less than 10 G of Amphetamine, or
at least 500 MG but less than 1 G of Amphetamine (actual);
 - At least 100 MG but less than 200 MG of LSD;
 - At least 4 G but less than 8 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]
Propanamide);
 - At least 1 G but less than 2 G of a Fentanyl Analogue;
 - At least 10 KG but less than 20 KG of Marihuana;
 - At least 2 KG but less than 5 KG of Hashish;
 - At least 200 G but less than 500 G of Hashish Oil;
 - At least 10,000 but less than 20,000 units of Ketamine;
 - At least 10,000 but less than 20,000 units of Schedule I or II Depressants;
 - At least 10,000 but less than 20,000 units of Schedule III substances (except Ketamine);
 - At least 625 but less than 1,250 units of Flunitrazepam;
 - At least 10 KG but less than 20 KG of **Converted Drug Weight**.

- (14) **Level 12**
- Less than 10 G of Heroin;
 - Less than 50 G of Cocaine;
 - Less than 2.8 G of Cocaine Base;
 - Less than 10 G of PCP, or
less than 1 G of PCP (actual);
 - Less than 5 G of Methamphetamine, or
less than 500 MG of Methamphetamine (actual), or
less than 500 MG of “Ice”;
 - Less than 5 G of Amphetamine, or
less than 500 MG of Amphetamine (actual);
 - Less than 100 MG of LSD;
 - Less than 4 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
 - Less than 1 G of a Fentanyl Analogue;
 - At least 5 KG but less than 10 KG of Marihuana;
 - At least 1 KG but less than 2 KG of Hashish;
 - At least 100 G but less than 200 G of Hashish Oil;
 - At least 5,000 but less than 10,000 units of Ketamine;
 - At least 5,000 but less than 10,000 units of Schedule I or II Depressants;
 - At least 5,000 but less than 10,000 units of Schedule III substances (except Ketamine);
 - At least 312 but less than 625 units of Flunitrazepam;
 - 80,000 units or more of Schedule IV substances (except Flunitrazepam);
 - At least 5 KG but less than 10 KG of **Converted Drug Weight**.

- | | | |
|------|---|-----------------|
| (15) | <ul style="list-style-type: none"> ● At least 2.5 KG but less than 5 KG of Marihuana; ● At least 500 G but less than 1 KG of Hashish; ● At least 50 G but less than 100 G of Hashish Oil; ● At least 2,500 but less than 5,000 units of Ketamine; ● At least 2,500 but less than 5,000 units of Schedule I or II Depressants; ● At least 2,500 but less than 5,000 units of Schedule III substances (except Ketamine); ● At least 156 but less than 312 units of Flunitrazepam; ● At least 40,000 but less than 80,000 units of Schedule IV substances (except Flunitrazepam); ● At least 2.5 KG but less than 5 KG of <i>Converted Drug Weight</i>. | Level 10 |
| (16) | <ul style="list-style-type: none"> ● At least 1 KG but less than 2.5 KG of Marihuana; ● At least 200 G but less than 500 G of Hashish; ● At least 20 G but less than 50 G of Hashish Oil; ● At least 1,000 but less than 2,500 units of Ketamine; ● At least 1,000 but less than 2,500 units of Schedule I or II Depressants; ● At least 1,000 but less than 2,500 units of Schedule III substances (except Ketamine); ● Less than 156 units of Flunitrazepam; ● At least 16,000 but less than 40,000 units of Schedule IV substances (except Flunitrazepam); ● 160,000 units or more of Schedule V substances; ● At least 1 KG but less than 2.5 KG of <i>Converted Drug Weight</i>. | Level 8 |
| (17) | <ul style="list-style-type: none"> ● Less than 1 KG of Marihuana; ● Less than 200 G of Hashish; ● Less than 20 G of Hashish Oil; ● Less than 1,000 units of Ketamine; ● Less than 1,000 units of Schedule I or II Depressants; ● Less than 1,000 units of Schedule III substances (except Ketamine); ● Less than 16,000 units of Schedule IV substances (except Flunitrazepam); ● Less than 160,000 units of Schedule V substances; ● Less than 1 KG of <i>Converted Drug Weight</i>. | Level 6 |

***Notes to Drug Quantity Table:**

- (A) Unless otherwise specified, the weight of a controlled substance set forth in the table 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 of the entire mixture or substance is assigned to the controlled substance that results in the greater offense level.
- (B) The terms “*PCP (actual)*”, “*Amphetamine (actual)*”, and “*Methamphetamine (actual)*” refer to the weight of the controlled substance, itself, contained in the mixture or substance. For example, a mixture weighing 10 grams containing PCP at 50% purity contains 5 grams of PCP (actual). In the case of a mixture or substance containing PCP, amphetamine, or methamphetamine, use the offense level determined by the entire weight of the mixture or substance, or the offense level determined by the weight of the PCP (actual), amphetamine (actual), or methamphetamine (actual), whichever is greater.

§2D1.1

The terms “**Hydrocodone (actual)**” and “**Oxycodone (actual)**” refer to the weight of the controlled substance, itself, contained in the pill, capsule, or mixture.

- (C) “**Ice**,” for the purposes of this guideline, means a mixture or substance containing d-methamphetamine hydrochloride of at least 80% purity.
- (D) “**Cocaine base**,” for the purposes of this guideline, means “crack.” “**Crack**” is the street name for a form of cocaine base, usually prepared by processing cocaine hydrochloride and sodium bicarbonate, and usually appearing in a lumpy, rocklike form.
- (E) In the case of an offense involving marihuana plants, treat each plant, regardless of sex, as equivalent to 100 grams of marihuana. *Provided*, however, that if the actual weight of the marihuana is greater, use the actual weight of the marihuana.
- (F) In the case of Schedule I or II Depressants (except gamma-hydroxybutyric acid), Schedule III substances, Schedule IV substances, and Schedule V substances, one “**unit**” means one pill, capsule, or tablet. If the substance (except gamma-hydroxybutyric acid) is in liquid form, one “**unit**” means 0.5 milliliters. For an anabolic steroid that is not in a pill, capsule, tablet, or liquid form (*e.g.*, patch, topical cream, aerosol), the court shall determine the base offense level using a reasonable estimate of the quantity of anabolic steroid involved in the offense. In making a reasonable estimate, the court shall consider that each 25 milligrams of an anabolic steroid is one “unit”.
- (G) In the case of LSD on a carrier medium (*e.g.*, a sheet of blotter paper), do not use the weight of the LSD/carrier medium. Instead, treat each dose of LSD on the carrier medium as equal to 0.4 milligrams of LSD for the purposes of the Drug Quantity Table.
- (H) **Hashish**, for the purposes of this guideline, means a resinous substance of cannabis that includes (i) one or more of the tetrahydrocannabinols (as listed in 21 C.F.R. § 1308.11(d)(31)), (ii) at least two of the following: cannabinol, cannabidiol, or cannabichromene, and (iii) fragments of plant material (such as cystolith fibers).
- (I) **Hashish oil**, for the purposes of this guideline, means a preparation of the soluble cannabinoids derived from cannabis that includes (i) one or more of the tetrahydrocannabinols (as listed in 21 C.F.R. § 1308.11(d)(31)), (ii) at least two of the following: cannabinol, cannabidiol, or cannabichromene, and (iii) is essentially free of plant material (*e.g.*, plant fragments). Typically, hashish oil is a viscous, dark colored oil, but it can vary from a dry resin to a colorless liquid.
- (J) **Fentanyl analogue**, for the purposes of this guideline, means any substance (including any salt, isomer, or salt of isomer thereof), whether a controlled substance or not, that has a chemical structure that is similar to fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide).

- (K) The term “**Converted Drug Weight**,” for purposes of this guideline, refers to a nominal reference designation that is used as a conversion factor in the Drug Conversion Tables set forth in the Commentary below, to determine the offense level for controlled substances that are not specifically referenced in the Drug Quantity Table or when combining differing controlled substances.

Commentary

Statutory Provisions: 21 U.S.C. §§ 841(a), (b)(1)–(3), (7), (g), 860a, 865, 960(a), (b); 49 U.S.C. § 46317(b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **“Mixture or Substance”.**—“*Mixture or substance*” as used in this guideline has the same meaning as in 21 U.S.C. § 841, except as expressly provided. Mixture or substance does not include materials that must be separated from the controlled substance before the controlled substance can be used. Examples of such materials include the fiberglass in a cocaine/fiberglass bonded suitcase, beeswax in a cocaine/beeswax statue, and waste water from an illicit laboratory used to manufacture a controlled substance. If such material cannot readily be separated from the mixture or substance that appropriately is counted in the Drug Quantity Table, the court may use any reasonable method to approximate the weight of the mixture or substance to be counted.

An upward departure nonetheless may be warranted when the mixture or substance counted in the Drug Quantity Table is combined with other, non-countable material in an unusually sophisticated manner in order to avoid detection.

Similarly, in the case of marihuana having a moisture content that renders the marihuana unsuitable for consumption without drying (this might occur, for example, with a bale of rain-soaked marihuana or freshly harvested marihuana that had not been dried), an approximation of the weight of the marihuana without such excess moisture content is to be used.

2. **“Plant”.**—For purposes of the guidelines, a “*plant*” is an organism having leaves and a readily observable root formation (*e.g.*, a marihuana cutting having roots, a rootball, or root hairs is a marihuana plant).
3. **Classification of Controlled Substances.**—Certain pharmaceutical preparations are classified as Schedule III, IV, or V controlled substances by the Drug Enforcement Administration under 21 C.F.R. § 1308.13–15 even though they contain a small amount of a Schedule I or II controlled substance. For example, Tylenol 3 is classified as a Schedule III controlled substance even though it contains a small amount of codeine, a Schedule II opiate. For the purposes of the guidelines, the classification of the controlled substance under 21 C.F.R. § 1308.13–15 is the appropriate classification.
4. **Applicability to “Counterfeit” Substances.**—The statute and guideline also apply to “*counterfeit*” substances, which are defined in 21 U.S.C. § 802 to mean controlled substances that are falsely labeled so as to appear to have been legitimately manufactured or distributed.
5. **Determining Drug Types and Drug Quantities.**—Types and quantities of drugs not specified in the count of conviction may be considered in determining the offense level. *See* §1B1.3(a)(2) (Relevant Conduct). Where there is no drug seizure or the amount seized does not reflect the

§2D1.1

scale of the offense, the court shall approximate the quantity of the controlled substance. In making this determination, the court may consider, for example, the price generally obtained for the controlled substance, financial or other records, similar transactions in controlled substances by the defendant, and the size or capability of any laboratory involved.

If the offense involved both a substantive drug offense and an attempt or conspiracy (*e.g.*, sale of five grams of heroin and an attempt to sell an additional ten grams of heroin), the total quantity involved shall be aggregated to determine the scale of the offense.

In an offense involving an agreement to sell a controlled substance, the agreed-upon quantity of the controlled substance shall be used to determine the offense level unless the sale is completed and the amount delivered more accurately reflects the scale of the offense. For example, a defendant agrees to sell 500 grams of cocaine, the transaction is completed by the delivery of the controlled substance — actually 480 grams of cocaine, and no further delivery is scheduled. In this example, the amount delivered more accurately reflects the scale of the offense. In contrast, in a reverse sting, the agreed-upon quantity of the controlled substance would more accurately reflect the scale of the offense because the amount actually delivered is controlled by the government, not by the defendant. If, however, the defendant establishes that the defendant did not intend to provide or purchase, or was not reasonably capable of providing or purchasing, the agreed-upon quantity of the controlled substance, the court shall exclude from the offense level determination the amount of controlled substance that the defendant establishes that the defendant did not intend to provide or purchase or was not reasonably capable of providing or purchasing.

6. **Analogues and Controlled Substances Not Referenced in this Guideline.**—Except as otherwise provided, any reference to a particular controlled substance in these guidelines includes all salts, isomers, all salts of isomers, and any analogue of that controlled substance. Any reference to cocaine includes ecgonine and coca leaves, except extracts of coca leaves from which cocaine and ecgonine have been removed. Unless otherwise specified, “*analogue*,” for purposes of this guideline, has the meaning given the term “controlled substance analogue” in 21 U.S.C. § 802(32). In determining the appropriate sentence, the court also may consider whether the same quantity of analogue produces a greater effect on the central nervous system than the controlled substance for which it is an analogue.

In the case of a controlled substance that is not specifically referenced in this guideline, determine the base offense level using the converted drug weight of the most closely related controlled substance referenced in this guideline. *See* Application Note 8. In determining the most closely related controlled substance, the court shall, to the extent practicable, consider the following:

- (A) Whether the controlled substance not referenced in this guideline has a chemical structure that is substantially similar to a controlled substance referenced in this guideline.
 - (B) Whether the controlled substance not referenced in this guideline has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance referenced in this guideline.
 - (C) Whether a lesser or greater quantity of the controlled substance not referenced in this guideline is needed to produce a substantially similar effect on the central nervous system as a controlled substance referenced in this guideline.
7. **Multiple Transactions or Multiple Drug Types.**—Where there are multiple transactions or multiple drug types, the quantities of drugs are to be added. Tables for making the necessary conversions are provided below.

8. **Use of Drug Conversion Tables.—**

(A) **Controlled Substances Not Referenced in Drug Quantity Table.**—The Commission has used the sentences provided in, and equivalences derived from, the statute (21 U.S.C. § 841(b)(1)), as the primary basis for the guideline sentences. The statute, however, provides direction only for the more common controlled substances, *i.e.*, heroin, cocaine, PCP, methamphetamine, fentanyl, LSD and marihuana. In the case of a controlled substance that is not specifically referenced in the Drug Quantity Table, determine the base offense level as follows:

- (i) Use the Drug Conversion Tables to find the converted drug weight of the controlled substance involved in the offense.
- (ii) Find the corresponding converted drug weight in the Drug Quantity Table.
- (iii) Use the offense level that corresponds to the converted drug weight determined above as the base offense level for the controlled substance involved in the offense.

(*See also* Application Note 6.) For example, in the Drug Conversion Tables set forth in this Note, 1 gram of a substance containing oxymorphone, a Schedule I opiate, converts to 5 kilograms of converted drug weight. In a case involving 100 grams of oxymorphone, the converted drug weight would be 500 kilograms, which corresponds to a base offense level of 26 in the Drug Quantity Table.

(B) **Combining Differing Controlled Substances.**—The Drug Conversion Tables also provide a means for combining differing controlled substances to obtain a single offense level. In each case, convert each of the drugs to its converted drug weight, add the quantities, and look up the total in the Drug Quantity Table to obtain the combined offense level.

For certain types of controlled substances, the converted drug weights assigned in the Drug Conversion Tables are “capped” at specified amounts (*e.g.*, the combined converted weight of all Schedule V controlled substances shall not exceed 2.49 kilograms of converted drug weight). Where there are controlled substances from more than one schedule (*e.g.*, a quantity of a Schedule IV substance and a quantity of a Schedule V substance), determine the converted drug weight for each schedule separately (subject to the cap, if any, applicable to that schedule). Then add the converted drug weights to determine the combined converted drug weight (subject to the cap, if any, applicable to the combined amounts).

Note: Because of the statutory equivalences, the ratios in the Drug Conversion Tables do not necessarily reflect dosages based on pharmacological equivalents.

(C) **Examples for Combining Differing Controlled Substances.**—

- (i) The defendant is convicted of selling 70 grams of a substance containing PCP (Level 20) and 250 milligrams of a substance containing LSD (Level 16). The PCP converts to 70 kilograms of converted drug weight; the LSD converts to 25 kilograms of converted drug weight. The total therefore converts to 95 kilograms of converted drug weight, for which the Drug Quantity Table provides an offense level of 22.
- (ii) The defendant is convicted of selling 500 grams of marihuana (Level 6) and 10,000 units of diazepam (Level 6). The marihuana converts to 500 grams of converted drug weight. The diazepam, a Schedule IV drug, converts to 625 grams of converted

§2D1.1

drug weight. The total, 1.125 kilograms of converted drug weight, has an offense level of 8 in the Drug Quantity Table.

- (iii) The defendant is convicted of selling 80 grams of cocaine (Level 14) and 2 grams of cocaine base (Level 12). The cocaine converts to 16 kilograms of converted drug weight, and the cocaine base converts to 7.142 kilograms of converted drug weight. The total therefore converts to 23.142 kilograms of converted drug weight, which has an offense level of 16 in the Drug Quantity Table.
- (iv) The defendant is convicted of selling 76,000 units of a Schedule III substance, 200,000 units of a Schedule IV substance, and 600,000 units of a Schedule V substance. The converted drug weight for the Schedule III substance is 76 kilograms (below the cap of 79.99 kilograms of converted drug weight set forth as the maximum converted weight for Schedule III substances). The converted drug weight for the Schedule IV substance is subject to a cap of 9.99 kilograms set forth as the maximum converted weight for Schedule IV substances (without the cap it would have been 12.5 kilograms). The converted drug weight for the Schedule V substance is subject to the cap of 2.49 kilograms set forth as the maximum converted weight for Schedule V substances (without the cap it would have been 3.75 kilograms). The combined converted weight, determined by adding together the above amounts, is subject to the cap of 79.99 kilograms of converted drug weight set forth as the maximum combined converted weight for Schedule III, IV, and V substances. Without the cap, the combined converted weight would have been 88.48 (76 + 9.99 + 2.49) kilograms.

(D) Drug Conversion Tables.—

SCHEDULE I OR II OPIATES*	CONVERTED DRUG WEIGHT
1 gm of Heroin =	1 kg
1 gm of Dextromoramide =	670 gm
1 gm of Dipipanone =	250 gm
1 gm of 1-Methyl-4-phenyl-4-propionoxypiperidine/MPPP =	700 gm
1 gm of 1-(2-Phenylethyl)-4-phenyl-4-acetyloxypiperidine/PEPAP =	700 gm
1 gm of Alphaprodine =	100 gm
1 gm of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide) =	2.5 kg
1 gm of a Fentanyl Analogue =	10 kg
1 gm of Hydromorphone/Dihydromorphinone =	2.5 kg
1 gm of Levorphanol =	2.5 kg
1 gm of Meperidine/Pethidine =	50 gm
1 gm of Methadone =	500 gm
1 gm of 6-Monoacetylmorphine =	1 kg
1 gm of Morphine =	500 gm
1 gm of Oxycodone (actual) =	6700 gm
1 gm of Oxymorphone =	5 kg
1 gm of Racemorphan =	800 gm
1 gm of Codeine =	80 gm
1 gm of Dextropropoxyphene/Propoxyphene-Bulk =	50 gm
1 gm of Ethylmorphine =	165 gm
1 gm of Hydrocodone (actual) =	6700 gm
1 gm of Mixed Alkaloids of Opium/Papaveretum =	250 gm
1 gm of Opium =	50 gm
1 gm of Levo-alpha-acetylmethadol (LAAM) =	3 kg

*Provided, that the minimum offense level from the Drug Quantity Table for any of these controlled substances individually, or in combination with another controlled substance, is level 12.

COCAINE AND OTHER SCHEDULE I AND II STIMULANTS (AND THEIR IMMEDIATE PRECURSORS)*	CONVERTED DRUG WEIGHT
1 gm of Cocaine =	200 gm
1 gm of N-Ethylamphetamine =	80 gm
1 gm of Fenethylamine =	40 gm
1 gm of Amphetamine =	2 kg
1 gm of Amphetamine (Actual) =	20 kg
1 gm of Methamphetamine =	2 kg
1 gm of Methamphetamine (Actual) =	20 kg
1 gm of "Ice" =	20 kg
1 gm of Khat =	.01 gm
1 gm of 4-Methylaminorex ("Euphoria") =	100 gm
1 gm of Methylphenidate (Ritalin) =	100 gm
1 gm of Phenmetrazine =	80 gm
1 gm Phenylacetone/P ₂ P (when possessed for the purpose of manufacturing methamphetamine) =	416 gm
1 gm Phenylacetone/P ₂ P (in any other case) =	75 gm
1 gm Cocaine Base ("Crack") =	3,571 gm
1 gm of Aminorex =	100 gm
1 gm of N-N-Dimethylamphetamine =	40 gm
1 gm of N-Benzylpiperazine =	100 gm

**Provided, that the minimum offense level from the Drug Quantity Table for any of these controlled substances individually, or in combination with another controlled substance, is level 12.*

SYNTHETIC CATHINONES (EXCEPT SCHEDULE III, IV, AND V SUBSTANCES)*	CONVERTED DRUG WEIGHT
1 gm of a synthetic cathinone (except a Schedule III, IV, or V substance) =	380 gm

**Provided, that the minimum offense level from the Drug Quantity Table for any synthetic cathinone (except a Schedule III, IV, or V substance) individually, or in combination with another controlled substance, is level 12.*

LSD, PCP, AND OTHER SCHEDULE I AND II HALLUCINOGENS (AND THEIR IMMEDIATE PRECURSORS)*	CONVERTED DRUG WEIGHT
1 gm of Bufotenine =	70 gm
1 gm of D-Lysergic Acid Diethylamide/Lysergide/LSD =	100 kg
1 gm of Diethyltryptamine/DET =	80 gm
1 gm of Dimethyltryptamine/DM =	100 gm
1 gm of Mescaline =	10 gm
1 gm of Mushrooms containing Psilocin and/or Psilocybin (Dry) =	1 gm
1 gm of Mushrooms containing Psilocin and/or Psilocybin (Wet) =	0.1 gm
1 gm of Peyote (Dry) =	0.5 gm
1 gm of Peyote (Wet) =	0.05 gm
1 gm of Phencyclidine/PCP =	1 kg
1 gm of Phencyclidine (actual) /PCP (actual) =	10 kg
1 gm of Psilocin =	500 gm
1 gm of Psilocybin =	500 gm
1 gm of Pyrrolidine Analog of Phencyclidine/PHP =	1 kg
1 gm of Thiophene Analog of Phencyclidine/TCP =	1 kg
1 gm of 4-Bromo-2,5-Dimethoxyamphetamine/DOB =	2.5 kg
1 gm of 2,5-Dimethoxy-4-methylamphetamine/DOM =	1.67 kg
1 gm of 3,4-Methylenedioxamphetamine/MDA =	500 gm
1 gm of 3,4-Methylenedioxymethamphetamine/MDMA =	500 gm
1 gm of 3,4-Methylenediox-N-ethylamphetamine/MDEA =	500 gm
1 gm of Paramethoxymethamphetamine/PMA =	500 gm
1 gm of 1-Piperidinocyclohexanecarbonitrile/PCC =	680 gm
1 gm of N-ethyl-1-phenylcyclohexylamine (PCE) =	1 kg

**Provided, that the minimum offense level from the Drug Quantity Table for any of these controlled substances individually, or in combination with another controlled substance, is level 12.*

§2D1.1

SCHEDULE I MARIHUANA	CONVERTED DRUG WEIGHT
1 gm of Marihuana/Cannabis, granulated, powdered, etc. =	1 gm
1 gm of Hashish Oil =	50 gm
1 gm of Cannabis Resin or Hashish =	5 gm
1 gm of Tetrahydrocannabinol, Organic =	167 gm
1 gm of Tetrahydrocannabinol, Synthetic =	167 gm

SYNTHETIC CANNABINOIDS (EXCEPT SCHEDULE III, IV, AND V SUBSTANCES)*	CONVERTED DRUG WEIGHT
1 gm of a synthetic cannabinoid (except a Schedule III, IV, or V substance) =	167 gm

**Provided*, that the minimum offense level from the Drug Quantity Table for any synthetic cannabinoid (except a Schedule III, IV, or V substance) individually, or in combination with another controlled substance, is level 12.

“Synthetic cannabinoid,” for purposes of this guideline, means any synthetic substance (other than synthetic tetrahydrocannabinol) that binds to and activates type 1 cannabinoid receptors (CB₁ receptors).

FLUNITRAZEPAM **	CONVERTED DRUG WEIGHT
1 unit of Flunitrazepam =	16 gm

***Provided*, that the minimum offense level from the Drug Quantity Table for flunitrazepam individually, or in combination with any Schedule I or II depressants, Schedule III substances, Schedule IV substances, and Schedule V substances is level 8.

SCHEDULE I OR II DEPRESSANTS (EXCEPT GAMMA-HYDROXYBUTYRIC ACID)	CONVERTED DRUG WEIGHT
1 unit of a Schedule I or II Depressant (except gamma-hydroxybutyric acid) =	1 gm

GAMMA-HYDROXYBUTYRIC ACID	CONVERTED DRUG WEIGHT
1 ml of gamma-hydroxybutyric acid =	8.8 gm

SCHEDULE III SUBSTANCES (EXCEPT KETAMINE)***	CONVERTED DRUG WEIGHT
1 unit of a Schedule III Substance =	1 gm

****Provided*, that the combined converted weight of all Schedule III substances (except ketamine), Schedule IV substances (except flunitrazepam), and Schedule V substances shall not exceed 79.99 kilograms of converted drug weight.

KETAMINE	CONVERTED DRUG WEIGHT
1 unit of ketamine =	1 gm

SCHEDULE IV SUBSTANCES (EXCEPT FLUNITRAZEPAM)****	CONVERTED DRUG WEIGHT
1 unit of a Schedule IV Substance (except Flunitrazepam) =	0.0625 gm

*****Provided*, that the combined converted weight of all Schedule IV (except flunitrazepam) and V substances shall not exceed 9.99 kilograms of converted drug weight.

SCHEDULE V SUBSTANCES*****	CONVERTED DRUG WEIGHT
1 unit of a Schedule V Substance =	0.00625 gm
***** <i>Provided</i> , that the combined converted weight of Schedule V substances shall not exceed 2.49 kilograms of converted drug weight.	

LIST I CHEMICALS (RELATING TO THE MANUFACTURE OF AMPHETAMINE OR METHAMPHETAMINE)*****	CONVERTED DRUG WEIGHT
1 gm of Ephedrine =	10 kg
1 gm of Phenylpropanolamine =	10 kg
1 gm of Pseudoephedrine =	10 kg
***** <i>Provided</i> , that in a case involving ephedrine, pseudoephedrine, or phenylpropanolamine tablets, use the weight of the ephedrine, pseudoephedrine, or phenylpropanolamine contained in the tablets, not the weight of the entire tablets, in calculating the base offense level.	

DATE RAPE DRUGS (EXCEPT FLUNITRAZEPAM, GHB, OR KETAMINE)	CONVERTED DRUG WEIGHT
1 ml of 1,4-butanediol =	8.8 gm
1 ml of gamma butyrolactone =	8.8 gm

To facilitate conversions to converted drug weight, the following table is provided:

MEASUREMENT CONVERSION TABLE
1 oz = 28.35 gm
1 lb = 453.6 gm
1 lb = 0.4536 kg
1 gal = 3.785 liters
1 qt = 0.946 liters
1 gm = 1 ml (liquid)
1 liter = 1,000 ml
1 kg = 1,000 gm
1 gm = 1,000 mg
1 grain = 64.8 mg.

9. **Determining Quantity Based on Doses, Pills, or Capsules.**—If the number of doses, pills, or capsules but not the weight of the controlled substance is known, multiply the number of doses, pills, or capsules by the typical weight per dose in the table below to estimate the total weight of the controlled substance (e.g., 100 doses of Mescaline at 500 milligrams per dose = 50 grams of mescaline). The Typical Weight Per Unit Table, prepared from information provided by the Drug Enforcement Administration, displays the typical weight per dose, pill, or capsule for certain controlled substances. Do not use this table if any more reliable estimate of the total weight is available from case-specific information.

TYPICAL WEIGHT PER UNIT (DOSE, PILL, OR CAPSULE) TABLE

HALLUCINOGENS	
MDA	250 mg
MDMA	250 mg
Mescaline	500 mg
PCP*	5 mg
Peyote (dry)	12 gm
Peyote (wet)	120 gm
Psilocin*	10 mg

§2D1.1

Psilocybe mushrooms (dry)	5 gm
Psilocybe mushrooms (wet)	50 gm
Psilocybin*	10 mg
2,5-Dimethoxy-4-methylamphetamine (STP, DOM)*	3 mg

MARIHUANA	
1 marihuana cigarette	0.5 gm

STIMULANTS	
Amphetamine*	10 mg
Methamphetamine*	5 mg
Phenmetrazine (Preludin)*	75 mg

*For controlled substances marked with an asterisk, the weight per unit shown is the weight of the actual controlled substance, and not generally the weight of the mixture or substance containing the controlled substance. Therefore, use of this table provides a very conservative estimate of the total weight.

10. **Determining Quantity of LSD.**—LSD on a blotter paper carrier medium typically is marked so that the number of doses (“hits”) per sheet readily can be determined. When this is not the case, it is to be presumed that each 1/4 inch by 1/4 inch section of the blotter paper is equal to one dose.

In the case of liquid LSD (LSD that has not been placed onto a carrier medium), using the weight of the LSD alone to calculate the offense level may not adequately reflect the seriousness of the offense. In such a case, an upward departure may be warranted.

11. **Application of Subsections (b)(1) and (b)(2).**—

(A) **Application of Subsection (b)(1).**—Definitions of “*firearm*” and “*dangerous weapon*” are found in the Commentary to §1B1.1 (Application Instructions). The enhancement for weapon possession in subsection (b)(1) reflects the increased danger of violence when drug traffickers possess weapons. The enhancement should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense. For example, the enhancement would not be applied if the defendant, arrested at the defendant’s residence, had an unloaded hunting rifle in the closet. The enhancement also applies to offenses that are referenced to §2D1.1; see §§2D1.2(a)(1) and (2), 2D1.5(a)(1), 2D1.6, 2D1.7(b)(1), 2D1.8, 2D1.11(c)(1), and 2D1.12(c)(1).

(B) **Interaction of Subsections (b)(1) and (b)(2).**—The enhancements in subsections (b)(1) and (b)(2) 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). However, in a case in which the defendant merely possessed a dangerous weapon but did not use violence, make a credible threat to use violence, or direct the use of violence, subsection (b)(2) would not apply.

12. **Application of Subsection (b)(5).**—If the offense involved importation of amphetamine or methamphetamine, and an adjustment from subsection (b)(3) applies, do not apply subsection (b)(5).
13. **Application of Subsection (b)(7).**—For purposes of subsection (b)(7), “*mass-marketing by means of an interactive computer service*” means the solicitation, by means of an interactive

computer service, of a large number of persons to induce those persons to purchase a controlled substance. For example, subsection (b)(7) would apply to a defendant who operated a web site to promote the sale of Gamma-hydroxybutyric Acid (GHB) but would not apply to coconspirators who use an interactive computer service only to communicate with one another in furtherance of the offense. “*Interactive computer service*”, for purposes of subsection (b)(7) and this note, has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

14. **Application of Subsection (b)(8).**—For purposes of subsection (b)(8), “*masking agent*” means a substance that, when taken before, after, or in conjunction with an anabolic steroid, prevents the detection of the anabolic steroid in an individual’s body.
15. **Application of Subsection (b)(9).**—For purposes of subsection (b)(9), “*athlete*” means an individual who participates in an athletic activity conducted by (A) an intercollegiate athletic association or interscholastic athletic association; (B) a professional athletic association; or (C) an amateur athletic organization.
16. **Application of Subsection (b)(11).**—Subsection (b)(11) does not apply if the purpose of the bribery was to obstruct or impede the investigation, prosecution, or sentencing of the defendant. Such conduct is covered by §3C1.1 (Obstructing or Impeding the Administration of Justice) and, if applicable, §2D1.1(b)(16)(D).
17. **Application of Subsection (b)(12).**—Subsection (b)(12) applies to a defendant who knowingly maintains a premises (*i.e.*, a building, room, or enclosure) for the purpose of manufacturing or distributing a controlled substance, including storage of a controlled substance for the purpose of distribution.

Among the factors the court should consider in determining whether the defendant “maintained” the premises are (A) whether the defendant held a possessory interest in (*e.g.*, owned or rented) the premises and (B) the extent to which the defendant controlled access to, or activities at, the premises.

Manufacturing or distributing a controlled substance need not be the sole purpose for which the premises was maintained, but must be one of the defendant’s primary or principal uses for the premises, rather than one of the defendant’s incidental or collateral uses for the premises. In making this determination, the court should consider how frequently the premises was used by the defendant for manufacturing or distributing a controlled substance and how frequently the premises was used by the defendant for lawful purposes.

18. **Application of Subsection (b)(14).**—
 - (A) **Hazardous or Toxic Substances (Subsection (b)(14)(A)).**—Subsection (b)(14)(A) applies if the conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d); the Federal Water Pollution Control Act, 33 U.S.C. § 1319(c); the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9603(b); or 49 U.S.C. § 5124 (relating to violations of laws and regulations enforced by the Department of Transportation with respect to the transportation of hazardous material). In some cases, the enhancement under subsection (b)(14)(A) may not account adequately for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, in determining the amount of restitution under §5E1.1 (Restitution) and in fashioning appropriate conditions of probation and supervision under §§5B1.3

§2D1.1

(Conditions of Probation) and 5D1.3 (Conditions of Supervised Release), respectively, any costs of environmental cleanup and harm to individuals or property shall be considered by the court in cases involving the manufacture of amphetamine or methamphetamine and should be considered by the court in cases involving the manufacture of a controlled substance other than amphetamine or methamphetamine. *See* 21 U.S.C. § 853(q) (mandatory restitution for cleanup costs relating to the manufacture of amphetamine and methamphetamine).

(B) Substantial Risk of Harm Associated with the Manufacture of Amphetamine and Methamphetamine (Subsection (b)(14)(C)–(D)).—

(i) **Factors to Consider.**—In determining, for purposes of subsection (b)(14)(C)(ii) or (D), whether the offense created a substantial risk of harm to human life or the environment, the court shall include consideration of the following factors:

- (I) The quantity of any chemicals or hazardous or toxic substances found at the laboratory, and the manner in which the chemicals or substances were stored.
- (II) The manner in which hazardous or toxic substances were disposed, and the likelihood of release into the environment of hazardous or toxic substances.
- (III) The duration of the offense, and the extent of the manufacturing operation.
- (IV) The location of the laboratory (*e.g.*, whether the laboratory is located in a residential neighborhood or a remote area), and the number of human lives placed at substantial risk of harm.

(ii) **Definitions.**—For purposes of subsection (b)(14)(D):

“Incompetent” means an individual who is incapable of taking care of the individual’s self or property because of a mental or physical illness or disability, mental retardation, or senility.

“Minor” has the meaning given that term in Application Note 1 of the Commentary to §2A3.1 (Criminal Sexual Abuse).

19. **Application of Subsection (b)(15).**—Subsection (b)(15) 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)(14)(A) and (b)(15) 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).

20. **Application of Subsection (b)(16).**—

(A) **Distributing to a Specified Individual or Involving Such an Individual in the Offense (Subsection (b)(16)(B)).**—If the defendant distributes a controlled substance to an individual or involves an individual in the offense, as specified in subsection (b)(16)(B), the individual is not a “vulnerable victim” for purposes of §3A1.1(b).

- (B) **Directly Involved in the Importation of a Controlled Substance (Subsection (b)(16)(C)).**—Subsection (b)(16)(C) applies if the defendant is accountable for the importation of a controlled substance under subsection (a)(1)(A) of §1B1.3 (Relevant Conduct (Factors that Determine the Guideline Range)), *i.e.*, the defendant committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused the importation of a controlled substance.

If subsection (b)(3) or (b)(5) applies, do not apply subsection (b)(16)(C).

- (C) **Pattern of Criminal Conduct Engaged in as a Livelihood (Subsection (b)(16)(E)).**—For purposes of subsection (b)(16)(E), “*pattern of criminal conduct*” and “*engaged in as a livelihood*” have the meaning given such terms in §4B1.3 (Criminal Livelihood).

21. **Applicability of Subsection (b)(18).**—The applicability of subsection (b)(18) shall be determined without regard to whether the defendant was convicted of an offense that subjects the defendant to a mandatory minimum term of imprisonment. Section §5C1.2(b), which provides a minimum offense level of level 17, is not pertinent to the determination of whether subsection (b)(18) applies.

22. **Application of Subsection (e)(1).**—

- (A) **Definition.**—For purposes of this guideline, “*sexual offense*” means a “sexual act” or “sexual contact” as those terms are defined in 18 U.S.C. § 2246(2) and (3), respectively.

- (B) **Upward Departure Provision.**—If the defendant committed a sexual offense against more than one individual, an upward departure would be warranted.

23. **Interaction with §3B1.3.**—A defendant who used special skills in the commission of the offense may be subject to an adjustment under §3B1.3 (Abuse of Position of Trust or Use of Special Skill). Certain professionals often occupy essential positions in drug trafficking schemes. These professionals include doctors, pilots, boat captains, financiers, bankers, attorneys, chemists, accountants, and others whose special skill, trade, profession, or position may be used to significantly facilitate the commission of a drug offense. Additionally, an enhancement under §3B1.3 ordinarily would apply in a case in which the defendant used his or her position as a coach to influence an athlete to use an anabolic steroid. Likewise, an adjustment under §3B1.3 ordinarily would apply in a case in which the defendant is convicted of a drug offense resulting from the authorization of the defendant to receive scheduled substances from an ultimate user or long-term care facility. *See* 21 U.S.C. § 822(g).

Note, however, that if an adjustment from subsection (b)(3)(C) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).

24. **Cases Involving Mandatory Minimum Penalties.**—Where a mandatory (statutory) minimum sentence applies, this mandatory minimum sentence may be “waived” and a lower sentence imposed (including a downward departure), as provided in 28 U.S.C. § 994(n), by reason of a defendant’s “substantial assistance in the investigation or prosecution of another person who has committed an offense.” *See* §5K1.1 (Substantial Assistance to Authorities). In addition, 18 U.S.C. § 3553(f) provides an exception to the applicability of mandatory minimum sentences in certain cases. *See* §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases).

25. **Imposition of Consecutive Sentence for 21 U.S.C. § 860a or § 865.**—Sections 860a and 865 of title 21, United States Code, require the imposition of a mandatory consecutive term of imprisonment of not more than 20 years and 15 years, respectively. In order to comply with the

§2D1.1

relevant statute, the court should determine the appropriate “total punishment” and divide the sentence on the judgment form between the sentence attributable to the underlying drug offense and the sentence attributable to 21 U.S.C. § 860a or § 865, specifying the number of months to be served consecutively for the conviction under 21 U.S.C. § 860a or § 865. For example, if the applicable adjusted guideline range is 151–188 months and the court determines a “total punishment” of 151 months is appropriate, a sentence of 130 months for the underlying offense plus 21 months for the conduct covered by 21 U.S.C. § 860a or § 865 would achieve the “total punishment” in a manner that satisfies the statutory requirement of a consecutive sentence.

26. **Cases Involving “Small Amount of Marihuana for No Remuneration”.**—Distribution of “a small amount of marihuana for no remuneration”, 21 U.S.C. § 841(b)(4), is treated as simple possession, to which §2D2.1 applies.

27. **Departure Considerations.**—

(A) **Downward Departure Based on Drug Quantity in Certain Reverse Sting Operations.**—If, in a reverse sting (an operation in which a government agent sells or negotiates to sell a controlled substance to a defendant), the court finds that the government agent set a price for the controlled substance that was substantially below the market value of the controlled substance, thereby leading to the defendant’s purchase of a significantly greater quantity of the controlled substance than his available resources would have allowed him to purchase except for the artificially low price set by the government agent, a downward departure may be warranted.

(B) **Upward Departure Based on Drug Quantity.**—In an extraordinary case, an upward departure above offense level 38 on the basis of drug quantity may be warranted. For example, an upward departure may be warranted where the quantity is at least ten times the minimum quantity required for level 38. Similarly, in the case of a controlled substance for which the maximum offense level is less than level 38, an upward departure may be warranted if the drug quantity substantially exceeds the quantity for the highest offense level established for that particular controlled substance.

(C) **Upward Departure Based on Unusually High Purity.**—Trafficking in controlled substances, compounds, or mixtures of unusually high purity may warrant an upward departure, except in the case of PCP, amphetamine, methamphetamine, hydrocodone, or oxycodone for which the guideline itself provides for the consideration of purity (*see* the footnote to the Drug Quantity Table). The purity of the controlled substance, particularly in the case of heroin, may be relevant in the sentencing process because it is probative of the defendant’s role or position in the chain of distribution. Since controlled substances are often diluted and combined with other substances as they pass down the chain of distribution, the fact that a defendant is in possession of unusually pure narcotics may indicate a prominent role in the criminal enterprise and proximity to the source of the drugs. As large quantities are normally associated with high purities, this factor is particularly relevant where smaller quantities are involved.

(D) **Departure Based on Potency of Synthetic Cathinones.**—In addition to providing converted drug weights for specific controlled substances and groups of substances, the Drug Conversion Tables provide converted drug weights for certain classes of controlled substances, such as synthetic cathinones. In the case of a synthetic cathinone that is not specifically referenced in this guideline, the converted drug weight for the class should be used to determine the appropriate offense level. However, there may be cases in which a substantially lesser or greater quantity of a synthetic cathinone is needed to produce an effect on the central nervous system similar to the effect produced by a typical synthetic cathinone

in the class, such as methcathinone or alpha-PVP. In such a case, a departure may be warranted. For example, an upward departure may be warranted in cases involving MDPV, a substance of which a lesser quantity is usually needed to produce an effect on the central nervous system similar to the effect produced by a typical synthetic cathinone. In contrast, a downward departure may be warranted in cases involving methylenedioxymethamphetamine, a substance of which a greater quantity is usually needed to produce an effect on the central nervous system similar to the effect produced by a typical synthetic cathinone.

(E) Departures for Certain Cases Involving Synthetic Cannabinoids.—

- (i) **Departure Based on Concentration of Synthetic Cannabinoids.**—Synthetic cannabinoids are manufactured as powder or crystalline substances. The concentrated substance is then usually sprayed on or soaked into a plant or other base material, and trafficked as part of a mixture. Nonetheless, there may be cases in which the substance involved in the offense is a synthetic cannabinoid not combined with any other substance. In such a case, an upward departure would be warranted.

There also may be cases in which the substance involved in the offense is a mixture containing a synthetic cannabinoid diluted with an unusually high quantity of base material. In such a case, a downward departure may be warranted.

- (ii) **Downward Departure Based on Potency of Synthetic Cannabinoids.**—In the case of a synthetic cannabinoid that is not specifically referenced in this guideline, the converted drug weight for the class should be used to determine the appropriate offense level. However, there may be cases in which a substantially greater quantity of a synthetic cannabinoid is needed to produce an effect on the central nervous system similar to the effect produced by a typical synthetic cannabinoid in the class, such as JWH-018 or AM-2201. In such a case, a downward departure may be warranted.

Background: Offenses under 21 U.S.C. §§ 841 and 960 receive identical punishment based upon the quantity of the controlled substance involved, the defendant's criminal history, and whether death or serious bodily injury resulted from the offense.

The base offense levels in §2D1.1 are either provided directly by the Anti-Drug Abuse Act of 1986 or are proportional to the levels established by statute, and apply to all unlawful trafficking. Levels 30 and 24 in the Drug Quantity Table are the distinctions provided by the Anti-Drug Abuse Act; however, further refinement of drug amounts is essential to provide a logical sentencing structure for drug offenses. To determine these finer distinctions, the Commission consulted numerous experts and practitioners, including authorities at the Drug Enforcement Administration, chemists, attorneys, probation officers, and members of the Organized Crime Drug Enforcement Task Forces, who also advocate the necessity of these distinctions. Where necessary, this scheme has been modified in response to specific congressional directives to the Commission.

The base offense levels at levels 24 and 30 establish guideline ranges such that the statutory minimum falls within the range; *e.g.*, level 30 ranges from 97 to 121 months, where the statutory minimum term is ten years or 120 months.

For marihuana plants, the Commission has adopted an equivalency of 100 grams per plant, or the actual weight of the usable marihuana, whichever is greater. The decision to treat each plant as equal to 100 grams is premised on the fact that the average yield from a mature marihuana plant equals 100 grams of marihuana. In controlled substance offenses, an attempt is assigned the same offense level as the object of the attempt. Consequently, the Commission adopted the policy that each plant is to be treated as the equivalent of an attempt to produce 100 grams of marihuana, except where the actual weight of the usable marihuana is greater.

§2D1.1

Because the weights of LSD carrier media vary widely and typically far exceed the weight of the controlled substance itself, the Commission has determined that basing offense levels on the entire weight of the LSD and carrier medium would produce unwarranted disparity among offenses involving the same quantity of actual LSD (but different carrier weights), as well as sentences disproportionate to those for other, more dangerous controlled substances, such as PCP. Consequently, in cases involving LSD contained in a carrier medium, the Commission has established a weight per dose of 0.4 milligram for purposes of determining the base offense level.

The dosage weight of LSD selected exceeds the Drug Enforcement Administration's standard dosage unit for LSD of 0.05 milligram (*i.e.*, the quantity of actual LSD per dose) in order to assign some weight to the carrier medium. Because LSD typically is marketed and consumed orally on a carrier medium, the inclusion of some weight attributable to the carrier medium recognizes (A) that offense levels for most other controlled substances are based upon the weight of the mixture containing the controlled substance without regard to purity, and (B) the decision in *Chapman v. United States*, 500 U.S. 453 (1991) (holding that the term "mixture or substance" in 21 U.S.C. § 841(b)(1) includes the carrier medium in which LSD is absorbed). At the same time, the weight per dose selected is less than the weight per dose that would equate the offense level for LSD on a carrier medium with that for the same number of doses of PCP, a controlled substance that comparative assessments indicate is more likely to induce violent acts and ancillary crime than is LSD. (Treating LSD on a carrier medium as weighing 0.5 milligram per dose would produce offense levels equivalent to those for PCP.) Thus, the approach decided upon by the Commission will harmonize offense levels for LSD offenses with those for other controlled substances and avoid an undue influence of varied carrier weight on the applicable offense level. Nonetheless, this approach does not override the applicability of "mixture or substance" for the purpose of applying any mandatory minimum sentence (*see Chapman*; §5G1.1(b)).

Frequently, a term of supervised release to follow imprisonment is required by statute for offenses covered by this guideline. Guidelines for the imposition, duration, and conditions of supervised release are set forth in Chapter Five, Part D (Supervised Release).

The last sentence of subsection (a)(5) implements the directive to the Commission in section 7(1) of Public Law 111–220.

Subsection (b)(2) implements the directive to the Commission in section 5 of Public Law 111–220.

Subsection (b)(3) is derived from Section 6453 of the Anti-Drug Abuse Act of 1988.

Subsection (b)(11) implements the directive to the Commission in section 6(1) of Public Law 111–220.

Subsection (b)(12) implements the directive to the Commission in section 6(2) of Public Law 111–220.

Subsection (b)(14)(A) implements the instruction to the Commission in section 303 of Public Law 103–237.

Subsections (b)(14)(C)(ii) and (D) implement, in a broader form, the instruction to the Commission in section 102 of Public Law 106–310.

Subsection (b)(16) implements the directive to the Commission in section 6(3) of Public Law 111–220.

Subsection (b)(17) implements the directive to the Commission in section 7(2) of Public Law 111–220.

The Drug Conversion Tables set forth in Application Note 8 were previously called the Drug Equivalency Tables. In the original 1987 *Guidelines Manual*, the Drug Equivalency Tables provided four conversion factors (or “equivalents”) for determining the base offense level in cases involving either a controlled substance not referenced in the Drug Quantity Table or multiple controlled substances: heroin, cocaine, PCP, and marihuana. In 1991, the Commission amended the Drug Equivalency Tables to provide for one substance, marihuana, as the single conversion factor in §2D1.1. See USSG App. C, Amendment 396 (effective November 1, 1991). In 2018, the Commission amended §2D1.1 to replace marihuana as the conversion factor with the new term “converted drug weight” and to change the title of the Drug Equivalency Tables to the “Drug Conversion Tables.”

<i>Historical Note</i>	Effective November 1, 1987. Amended effective January 15, 1988 (amendments 19, 20, and 21); November 1, 1989 (amendments 123–134, 302, and 303); November 1, 1990 (amendment 318); November 1, 1991 (amendments 369–371 and 394–396); November 1, 1992 (amendments 446 and 447); November 1, 1993 (amendments 479, 484–488, and 499); September 23, 1994 (amendment 509); November 1, 1994 (amendment 505); November 1, 1995 (amendments 514–518); November 1, 1997 (amendments 555 and 556); November 1, 2000 (amendments 594 and 605); December 16, 2000 (amendment 608); May 1, 2001 (amendments 609–611); November 1, 2001 (amendments 620–625); November 1, 2002 (amendment 640); November 1, 2003 (amendment 657); November 1, 2004 (amendments 667, 668, and 674); November 1, 2005 (amendment 679); March 27, 2006 (amendment 681); November 1, 2006 (amendments 684 and 688); November 1, 2007 (amendments 705, 706, and 711); May 1, 2008 (amendment 715); November 1, 2009 (amendments 727 and 728); November 1, 2010 (amendments 746 and 748); November 1, 2011 (amendments 750, 751, and 760); November 1, 2012 (amendments 762 and 770); November 1, 2013 (amendment 777); November 1, 2014 (amendments 782 and 783); November 1, 2015 (amendments 793 and 797); November 1, 2018 (amendments 807 and 808).
------------------------	---

§2D1.2. Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy

- (a) Base Offense Level (Apply the greatest):
- (1) **2** plus the offense level from §2D1.1 applicable to the quantity of controlled substances directly involving a protected location or an underage or pregnant individual; or
 - (2) **1** plus the offense level from §2D1.1 applicable to the total quantity of controlled substances involved in the offense; or
 - (3) **26**, if the offense involved a person less than eighteen years of age; or
 - (4) **13**, otherwise.

Commentary

Statutory Provisions: 21 U.S.C. §§ 859 (formerly 21 U.S.C. § 845), 860 (formerly 21 U.S.C. § 845a), 861 (formerly 21 U.S.C. § 845b).

§2D1.3

Application Note:

1. This guideline applies only in a case in which the defendant is convicted of a statutory violation of drug trafficking in a protected location or involving an underage or pregnant individual (including an attempt or conspiracy to commit such a violation) or in a case in which the defendant stipulated to such a statutory violation. *See* §1B1.2(a). In a case involving such a conviction but in which only part of the relevant offense conduct directly involved a protected location or an underage or pregnant individual, subsections (a)(1) and (a)(2) may result in different offense levels. For example, if the defendant, as part of the same course of conduct or common scheme or plan, sold 5 grams of heroin near a protected location and 10 grams of heroin elsewhere, the offense level from subsection (a)(1) would be level 14 (2 plus the offense level for the sale of 5 grams of heroin, the amount sold near the protected location); the offense level from subsection (a)(2) would be level 15 (1 plus the offense level for the sale of 15 grams of heroin, the total amount of heroin involved in the offense).

Background: This section implements the direction to the Commission in Section 6454 of the Anti-Drug Abuse Act of 1988.

<i>Historical Note</i>	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 22); November 1, 1989 (amendment 135); November 1, 1990 (amendment 319); November 1, 1991 (amendment 421); November 1, 1992 (amendment 447); November 1, 2000 (amendment 591); November 1, 2014 (amendment 782).
------------------------	--

§2D1.3. [Deleted]

<i>Historical Note</i>	Section 2D1.3 (Distributing Controlled Substances to Individuals Younger than Twenty-One Years, to Pregnant Women, or Within 1000 Feet of a School or College), effective November 1, 1987, amended effective January 15, 1988 (amendment 23), was deleted by consolidation with §2D1.2 effective November 1, 1989 (amendment 135).
------------------------	---

§2D1.4. [Deleted]

<i>Historical Note</i>	Section 2D1.4 (Attempts and Conspiracies), effective November 1, 1987, amended effective November 1, 1989 (amendments 136–138), was deleted by consolidation with the guidelines applicable to the underlying substantive offenses effective November 1, 1992 (amendment 447).
------------------------	--

§2D1.5. Continuing Criminal Enterprise; Attempt or Conspiracy

(a) Base Offense Level (Apply the greater):

- (1) 4 plus the offense level from §2D1.1 applicable to the underlying offense; or
- (2) 38.

Commentary

Statutory Provision: 21 U.S.C. § 848.

Application Notes:

1. Do not apply any adjustment from Chapter Three, Part B (Role in the Offense).
2. If as part of the enterprise the defendant sanctioned the use of violence, or if the number of persons managed by the defendant was extremely large, an upward departure may be warranted.
3. Under 21 U.S.C. § 848, certain conduct for which the defendant has previously been sentenced may be charged as part of the instant offense to establish a “continuing series of violations.” A sentence resulting from a conviction sustained prior to the last overt act of the instant offense is to be considered a prior sentence under §4A1.2(a)(1) and not part of the instant offense.
4. Violations of 21 U.S.C. § 848 will be grouped with other drug offenses for the purpose of applying Chapter Three, Part D (Multiple Counts).

Background: Because a conviction under 21 U.S.C. § 848 establishes that a defendant controlled and exercised authority over one of the most serious types of ongoing criminal activity, this guideline provides a minimum base offense level of 38. An adjustment from Chapter Three, Part B is not authorized because the offense level of this guideline already reflects an adjustment for role in the offense.

Title 21 U.S.C. § 848 provides a 20-year minimum mandatory penalty for the first conviction, a 30-year minimum mandatory penalty for a second conviction, and a mandatory life sentence for principal administrators of extremely large enterprises. If the application of the guidelines results in a sentence below the minimum sentence required by statute, the statutory minimum shall be the guideline sentence. *See* §5G1.1(b).

<i>Historical Note</i>	Effective November 1, 1987. Amended effective October 15, 1988 (amendment 66); November 1, 1989 (amendment 139); November 1, 1992 (amendment 447).
------------------------	--

§2D1.6. Use of Communication Facility in Committing Drug Offense; Attempt or Conspiracy

- (a) Base Offense Level: the offense level applicable to the underlying offense.

Commentary

Statutory Provision: 21 U.S.C. § 843(b).

Application Note:

1. Where the offense level for the underlying offense is to be determined by reference to §2D1.1, *see* Application Note 5 of the Commentary to §2D1.1 for guidance in determining the scale of the offense. Note that the Drug Quantity Table in §2D1.1 provides a minimum offense level of 12 where the offense involves heroin (or other Schedule I or II opiates), cocaine (or other Schedule I or II stimulants), cocaine base, PCP, methamphetamine, LSD (or other Schedule I or II hallucin-

§2D1.7

ogens), fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide), or fentanyl analogue (§2D1.1(c)(14)); a minimum offense level of 8 where the offense involves flunitrazepam (§2D1.1(c)(16)); and a minimum offense level of 6 otherwise (§2D1.1(c)(17)).

Background: This section covers the use of a communication facility in committing a drug offense. A communication facility includes any public or private instrument used in the transmission of writing, signs, signals, pictures, and sound; *e.g.*, telephone, wire, radio.

<i>Historical Note</i>	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 320); November 1, 1992 (amendment 447); November 1, 1994 (amendment 505); November 1, 2009 (amendment 737); November 1, 2012 (amendment 770); November 1, 2018 (amendment 807).
------------------------	---

§2D1.7. Unlawful Sale or Transportation of Drug Paraphernalia; Attempt or Conspiracy

(a) Base Offense Level: **12**

(b) Cross Reference

- (1) If the offense involved a controlled substance, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) or §2D2.1 (Unlawful Possession), as appropriate, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provision: 21 U.S.C. § 863 (formerly 21 U.S.C. § 857).

Application Note:

1. The typical case addressed by this guideline involves small-scale trafficking in drug paraphernalia (generally from a retail establishment that also sells items that are not unlawful). In a case involving a large-scale dealer, distributor, or manufacturer, an upward departure may be warranted. Conversely, where the offense was not committed for pecuniary gain (*e.g.*, transportation for the defendant's personal use), a downward departure may be warranted.

<i>Historical Note</i>	Effective November 1, 1987. Amended effective November 1, 1991 (amendment 397); November 1, 1992 (amendment 447).
------------------------	---

§2D1.8. Renting or Managing a Drug Establishment; Attempt or Conspiracy

(a) Base Offense Level:

- (1) The offense level from §2D1.1 applicable to the underlying controlled substance offense, except as provided below.

- (2) If the defendant had no participation in the underlying controlled substance offense other than allowing use of the premises, the offense level shall be 4 levels less than the offense level from §2D1.1 applicable to the underlying controlled substance offense, but not greater than level 26.

(b) Special Instruction

- (1) If the offense level is determined under subsection (a)(2), do not apply an adjustment under §3B1.2 (Mitigating Role).

Commentary

Statutory Provision: 21 U.S.C. § 856.

Application Note:

1. Subsection (a)(2) does not apply unless the defendant had no participation in the underlying controlled substance offense other than allowing use of the premises. For example, subsection (a)(2) would not apply to a defendant who possessed a dangerous weapon in connection with the offense, a defendant who guarded the cache of controlled substances, a defendant who arranged for the use of the premises for the purpose of facilitating a drug transaction, a defendant who allowed the use of more than one premises, a defendant who made telephone calls to facilitate the underlying controlled substance offense, or a defendant who otherwise assisted in the commission of the underlying controlled substance offense. Furthermore, subsection (a)(2) does not apply unless the defendant initially leased, rented, purchased, or otherwise acquired a possessory interest in the premises for a legitimate purpose. Finally, subsection (a)(2) does not apply if the defendant had previously allowed any premises to be used as a drug establishment without regard to whether such prior misconduct resulted in a conviction.

Background: This section covers the offense of knowingly opening, maintaining, managing, or controlling any building, room, or enclosure for the purpose of manufacturing, distributing, storing, or using a controlled substance contrary to law (*e.g.*, a “crack house”).

<i>Historical Note</i>	Effective November 1, 1987. Amended effective November 1, 1991 (amendment 394); November 1, 1992 (amendments 447 and 448); November 1, 2002 (amendment 640).
------------------------	--

§2D1.9. Placing or Maintaining Dangerous Devices on Federal Property to Protect the Unlawful Production of Controlled Substances; Attempt or Conspiracy

(a) Base Offense Level: 23

Commentary

Statutory Provision: 21 U.S.C. § 841(d)(1).

§2D1.10

Background: This section covers the offense of assembling, placing, or causing to be placed, or maintaining a “booby-trap” on federal property where a controlled substance is being manufactured or distributed.

<i>Historical Note</i>	Effective November 1, 1987. Amended effective November 1, 1992 (amendment 447); November 1, 2002 (amendment 646).
------------------------	---

§2D1.10. Endangering Human Life While Illegally Manufacturing a Controlled Substance; Attempt or Conspiracy

- (a) Base Offense Level (Apply the greater):
 - (1) **3** plus the offense level from the Drug Quantity Table in §2D1.1; or
 - (2) **20**.
- (b) Specific Offense Characteristic
 - (1) (Apply the greater):
 - (A) If the offense involved the manufacture of amphetamine or methamphetamine, increase by **3** levels. If the resulting offense level is less than level **27**, increase to level **27**.
 - (B) If the offense (i) involved the manufacture of amphetamine or methamphetamine; and (ii) created a substantial risk of harm to the life of a minor or an incompetent, increase by **6** levels. If the resulting offense level is less than level **30**, increase to level **30**.

Commentary

Statutory Provision: 21 U.S.C. § 858.

Application Note:

1. **Substantial Risk of Harm Associated with the Manufacture of Amphetamine and Methamphetamine.—**
 - (A) **Factors to Consider.**—In determining, for purposes of subsection (b)(1)(B), whether the offense created a substantial risk of harm to the life of a minor or an incompetent, the court shall include consideration of the following factors:
 - (i) The quantity of any chemicals or hazardous or toxic substances found at the laboratory, and the manner in which the chemicals or substances were stored.
 - (ii) The manner in which hazardous or toxic substances were disposed, and the likelihood of release into the environment of hazardous or toxic substances.

- (iii) The duration of the offense, and the extent of the manufacturing operation.
- (iv) The location of the laboratory (*e.g.*, whether the laboratory is located in a residential neighborhood or a remote area), and the number of human lives placed at substantial risk of harm.

(B) **Definitions.**—For purposes of subsection (b)(1)(B):

“Incompetent” means an individual who is incapable of taking care of the individual’s self or property because of a mental or physical illness or disability, mental retardation, or senility.

“Minor” has the meaning given that term in Application Note 1 of the Commentary to §2A3.1 (Criminal Sexual Abuse).

Background: Subsection (b)(1) implements the instruction to the Commission in section 102 of Public Law 106–310.

<i>Historical Note</i>	Effective November 1, 1989 (amendment 140). Amended effective November 1, 1992 (amendment 447); December 16, 2000 (amendment 608); November 1, 2001 (amendment 620).
------------------------	--

§2D1.11. Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy

- (a) **Base Offense Level:** The offense level from the Chemical Quantity Table set forth in subsection (d) or (e), as appropriate, except that if (A) the defendant receives an adjustment under §3B1.2 (Mitigating Role); and (B) the base offense level under subsection (d) is (i) level **32**, decrease by **2** levels; (ii) level **34** or level **36**, decrease by **3** levels; or (iii) level **38**, decrease by **4** levels.
- (b) **Specific Offense Characteristics**
 - (1) If a dangerous weapon (including a firearm) was possessed, increase by **2** levels.
 - (2) If the defendant is convicted of violating 21 U.S.C. § 841(c)(2) or (f)(1), or § 960(d)(2), (d)(3), or (d)(4), decrease by **3** levels, unless the defendant knew or believed that the listed chemical was to be used to manufacture a controlled substance unlawfully.
 - (3) If the offense involved (A) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (B) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by **2** levels.

§2D1.11

- (4) If the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), distributed a listed chemical through mass-marketing by means of an interactive computer service, increase by **2** levels.
 - (5) If the defendant is convicted under 21 U.S.C. § 865, increase by **2** levels.
 - (6) If the defendant meets the criteria set forth in subdivisions (1)–(5) of subsection (a) of §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), decrease by **2** levels.
- (c) Cross Reference
- (1) If the offense involved unlawfully manufacturing a controlled substance, or attempting to manufacture a controlled substance unlawfully, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, Trafficking) if the resulting offense level is greater than that determined above.

**(d) EPHEDRINE, PSEUDOEPHEDRINE, AND
PHENYLPROPANOLAMINE
QUANTITY TABLE***

(Methamphetamine and Amphetamine Precursor Chemicals)

QUANTITY	BASE OFFENSE LEVEL
(1) 9 KG or more of Ephedrine; 9 KG or more of Phenylpropanolamine; 9 KG or more of Pseudoephedrine.	Level 38
(2) At least 3 KG but less than 9 KG of Ephedrine; At least 3 KG but less than 9 KG of Phenylpropanolamine; At least 3 KG but less than 9 KG of Pseudoephedrine.	Level 36
(3) At least 1 KG but less than 3 KG of Ephedrine; At least 1 KG but less than 3 KG of Phenylpropanolamine; At least 1 KG but less than 3 KG of Pseudoephedrine.	Level 34
(4) At least 300 G but less than 1 KG of Ephedrine; At least 300 G but less than 1 KG of Phenylpropanolamine; At least 300 G but less than 1 KG of Pseudoephedrine.	Level 32
(5) At least 100 G but less than 300 G of Ephedrine; At least 100 G but less than 300 G of Phenylpropanolamine; At least 100 G but less than 300 G of Pseudoephedrine.	Level 30

(6)	At least 70 G but less than 100 G of Ephedrine; At least 70 G but less than 100 G of Phenylpropanolamine; At least 70 G but less than 100 G of Pseudoephedrine.	Level 28
(7)	At least 40 G but less than 70 G of Ephedrine; At least 40 G but less than 70 G of Phenylpropanolamine; At least 40 G but less than 70 G of Pseudoephedrine.	Level 26
(8)	At least 10 G but less than 40 G of Ephedrine; At least 10 G but less than 40 G of Phenylpropanolamine; At least 10 G but less than 40 G of Pseudoephedrine.	Level 24
(9)	At least 8 G but less than 10 G of Ephedrine; At least 8 G but less than 10 G of Phenylpropanolamine; At least 8 G but less than 10 G of Pseudoephedrine.	Level 22
(10)	At least 6 G but less than 8 G of Ephedrine; At least 6 G but less than 8 G of Phenylpropanolamine; At least 6 G but less than 8 G of Pseudoephedrine.	Level 20
(11)	At least 4 G but less than 6 G of Ephedrine; At least 4 G but less than 6 G of Phenylpropanolamine; At least 4 G but less than 6 G of Pseudoephedrine.	Level 18
(12)	At least 2 G but less than 4 G of Ephedrine; At least 2 G but less than 4 G of Phenylpropanolamine; At least 2 G but less than 4 G of Pseudoephedrine.	Level 16
(13)	At least 1 G but less than 2 G of Ephedrine; At least 1 G but less than 2 G of Phenylpropanolamine; At least 1 G but less than 2 G of Pseudoephedrine.	Level 14
(14)	Less than 1 G of Ephedrine; Less than 1 G of Phenylpropanolamine; Less than 1 G of Pseudoephedrine.	Level 12

(e) CHEMICAL QUANTITY TABLE*
(All Other Precursor Chemicals)

LISTED CHEMICALS AND QUANTITY	BASE OFFENSE LEVEL
(1) List I Chemicals 2.7 KG or more of Benzaldehyde; 60 KG or more of Benzyl Cyanide; 600 G or more of Ergonovine; 1.2 KG or more of Ergotamine; 60 KG or more of Ethylamine; 6.6 KG or more of Hydriodic Acid; 3.9 KG or more of Iodine;	Level 30

§2D1.11

960 KG or more of Isosafrole;
600 G or more of Methylamine;
1500 KG or more of N-Methylephedrine;
1500 KG or more of N-Methylpseudoephedrine;
1.9 KG or more of Nitroethane;
30 KG or more of Norpseudoephedrine;
60 KG or more of Phenylacetic Acid;
30 KG or more of Piperidine;
960 KG or more of Piperonal;
4.8 KG or more of Propionic Anhydride;
960 KG or more of Safrole;
1200 KG or more of 3, 4-Methylenedioxyphenyl-2-propanone;
3406.5 L or more of Gamma-butyrolactone;
2.1 KG or more of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid.

(2) **List I Chemicals** **Level 28**

At least 890 G but less than 2.7 KG of Benzaldehyde;
At least 20 KG but less than 60 KG of Benzyl Cyanide;
At least 200 G but less than 600 G of Ergonovine;
At least 400 G but less than 1.2 KG of Ergotamine;
At least 20 KG but less than 60 KG of Ethylamine;
At least 2.2 KG but less than 6.6 KG of Hydriodic Acid;
At least 1.3 KG but less than 3.9 KG of Iodine;
At least 320 KG but less than 960 KG of Isosafrole;
At least 200 G but less than 600 G of Methylamine;
At least 500 KG but less than 1500 KG of N-Methylephedrine;
At least 500 KG but less than 1500 KG of N-Methylpseudoephedrine;
At least 625 G but less than 1.9 KG of Nitroethane;
At least 10 KG but less than 30 KG of Norpseudoephedrine;
At least 20 KG but less than 60 KG of Phenylacetic Acid;
At least 10 KG but less than 30 KG of Piperidine;
At least 320 KG but less than 960 KG of Piperonal;
At least 1.6 KG but less than 4.8 KG of Propionic Anhydride;
At least 320 KG but less than 960 KG of Safrole;
At least 400 KG but less than 1200 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 1135.5 L but less than 3406.5 L of Gamma-butyrolactone;
At least 714 G but less than 2.1 KG of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

33 KG or more of Acetic Anhydride;
3525 KG or more of Acetone;
60 KG or more of Benzyl Chloride;
3225 KG or more of Ethyl Ether;
3600 KG or more of Methyl Ethyl Ketone;
30 KG or more of Potassium Permanganate;
3900 KG or more of Toluene.

(3) **List I Chemicals** **Level 26**

At least 267 G but less than 890 G of Benzaldehyde;
At least 6 KG but less than 20 KG of Benzyl Cyanide;
At least 60 G but less than 200 G of Ergonovine;
At least 120 G but less than 400 G of Ergotamine;

At least 6 KG but less than 20 KG of Ethylamine;
 At least 660 G but less than 2.2 KG of Hydriodic Acid;
 At least 376.2 G but less than 1.3 KG of Iodine;
 At least 96 KG but less than 320 KG of Isosafrole;
 At least 60 G but less than 200 G of Methylamine;
 At least 150 KG but less than 500 KG of N-Methylephedrine;
 At least 150 KG but less than 500 KG of N-Methylpseudoephedrine;
 At least 187.5 G but less than 625 G of Nitroethane;
 At least 3 KG but less than 10 KG of Norpseudoephedrine;
 At least 6 KG but less than 20 KG of Phenylacetic Acid;
 At least 3 KG but less than 10 KG of Piperidine;
 At least 96 KG but less than 320 KG of Piperonal;
 At least 480 G but less than 1.6 KG of Propionic Anhydride;
 At least 96 KG but less than 320 KG of Safrole;
 At least 120 KG but less than 400 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
 At least 340.7 L but less than 1135.5 L of Gamma-butyrolactone;
 At least 214 G but less than 714 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

At least 11 KG but less than 33 KG of Acetic Anhydride;
 At least 1175 KG but less than 3525 KG of Acetone;
 At least 20 KG but less than 60 KG of Benzyl Chloride;
 At least 1075 KG but less than 3225 KG of Ethyl Ether;
 At least 1200 KG but less than 3600 KG of Methyl Ethyl Ketone;
 At least 10 KG but less than 30 KG of Potassium Permanganate;
 At least 1300 KG but less than 3900 KG of Toluene.

(4) List I Chemicals

Level 24

At least 89 G but less than 267 G of Benzaldehyde;
 At least 2 KG but less than 6 KG of Benzyl Cyanide;
 At least 20 G but less than 60 G of Ergonovine;
 At least 40 G but less than 120 G of Ergotamine;
 At least 2 KG but less than 6 KG of Ethylamine;
 At least 220 G but less than 660 G of Hydriodic Acid;
 At least 125.4 G but less than 376.2 G of Iodine;
 At least 32 KG but less than 96 KG of Isosafrole;
 At least 20 G but less than 60 G of Methylamine;
 At least 50 KG but less than 150 KG of N-Methylephedrine;
 At least 50 KG but less than 150 KG of N-Methylpseudoephedrine;
 At least 62.5 G but less than 187.5 G of Nitroethane;
 At least 1 KG but less than 3 KG of Norpseudoephedrine;
 At least 2 KG but less than 6 KG of Phenylacetic Acid;
 At least 1 KG but less than 3 KG of Piperidine;
 At least 32 KG but less than 96 KG of Piperonal;
 At least 160 G but less than 480 G of Propionic Anhydride;
 At least 32 KG but less than 96 KG of Safrole;
 At least 40 KG but less than 120 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
 At least 113.6 L but less than 340.7 L of Gamma-butyrolactone;
 At least 71 G but less than 214 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

At least 3.3 KG but less than 11 KG of Acetic Anhydride;
 At least 352.5 KG but less than 1175 KG of Acetone;
 At least 6 KG but less than 20 KG of Benzyl Chloride;
 At least 322.5 KG but less than 1075 KG of Ethyl Ether;
 At least 360 KG but less than 1200 KG of Methyl Ethyl Ketone;
 At least 3 KG but less than 10 KG of Potassium Permanganate;
 At least 390 KG but less than 1300 KG of Toluene.

(5) **List I Chemicals**

Level 22

At least 62.3 G but less than 89 G of Benzaldehyde;
 At least 1.4 KG but less than 2 KG of Benzyl Cyanide;
 At least 14 G but less than 20 G of Ergonovine;
 At least 28 G but less than 40 G of Ergotamine;
 At least 1.4 KG but less than 2 KG of Ethylamine;
 At least 154 G but less than 220 G of Hydriodic Acid;
 At least 87.8 G but less than 125.4 G of Iodine;
 At least 22.4 KG but less than 32 KG of Isosafrole;
 At least 14 G but less than 20 G of Methylamine;
 At least 35 KG but less than 50 KG of N-Methylephedrine;
 At least 35 KG but less than 50 KG of N-Methylpseudoephedrine;
 At least 43.8 G but less than 62.5 G of Nitroethane;
 At least 700 G but less than 1 KG of Norpseudoephedrine;
 At least 1.4 KG but less than 2 KG of Phenylacetic Acid;
 At least 700 G but less than 1 KG of Piperidine;
 At least 22.4 KG but less than 32 KG of Piperonal;
 At least 112 G but less than 160 G of Propionic Anhydride;
 At least 22.4 KG but less than 32 KG of Safrole;
 At least 28 KG but less than 40 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
 At least 79.5 L but less than 113.6 L of Gamma-butyrolactone;
 At least 50 G but less than 71 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

At least 1.1 KG but less than 3.3 KG of Acetic Anhydride;
 At least 117.5 KG but less than 352.5 KG of Acetone;
 At least 2 KG but less than 6 KG of Benzyl Chloride;
 At least 107.5 KG but less than 322.5 KG of Ethyl Ether;
 At least 120 KG but less than 360 KG of Methyl Ethyl Ketone;
 At least 1 KG but less than 3 KG of Potassium Permanganate;
 At least 130 KG but less than 390 KG of Toluene.

(6) **List I Chemicals**

Level 20

At least 35.6 G but less than 62.3 G of Benzaldehyde;
 At least 800 G but less than 1.4 KG of Benzyl Cyanide;
 At least 8 G but less than 14 G of Ergonovine;
 At least 16 G but less than 28 G of Ergotamine;
 At least 800 G but less than 1.4 KG of Ethylamine;
 At least 88 G but less than 154 G of Hydriodic Acid;
 At least 50.2 G but less than 87.8 G of Iodine;
 At least 12.8 KG but less than 22.4 KG of Isosafrole;
 At least 8 G but less than 14 G of Methylamine;
 At least 20 KG but less than 35 KG of N-Methylephedrine;

At least 20 KG but less than 35 KG of N-Methylpseudoephedrine;
 At least 25 G but less than 43.8 G of Nitroethane;
 At least 400 G but less than 700 G of Norpseudoephedrine;
 At least 800 G but less than 1.4 KG of Phenylacetic Acid;
 At least 400 G but less than 700 G of Piperidine;
 At least 12.8 KG but less than 22.4 KG of Piperonal;
 At least 64 G but less than 112 G of Propionic Anhydride;
 At least 12.8 KG but less than 22.4 KG of Safrole;
 At least 16 KG but less than 28 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
 At least 45.4 L but less than 79.5 L of Gamma-butyrolactone;
 At least 29 G but less than 50 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

At least 726 G but less than 1.1 KG of Acetic Anhydride;
 At least 82.25 KG but less than 117.5 KG of Acetone;
 At least 1.4 KG but less than 2 KG of Benzyl Chloride;
 At least 75.25 KG but less than 107.5 KG of Ethyl Ether;
 At least 84 KG but less than 120 KG of Methyl Ethyl Ketone;
 At least 700 G but less than 1 KG of Potassium Permanganate;
 At least 91 KG but less than 130 KG of Toluene.

(7) List I Chemicals

Level 18

At least 8.9 G but less than 35.6 G of Benzaldehyde;
 At least 200 G but less than 800 G of Benzyl Cyanide;
 At least 2 G but less than 8 G of Ergonovine;
 At least 4 G but less than 16 G of Ergotamine;
 At least 200 G but less than 800 G of Ethylamine;
 At least 22 G but less than 88 G of Hydriodic Acid;
 At least 12.5 G but less than 50.2 G of Iodine;
 At least 3.2 KG but less than 12.8 KG of Isosafrole;
 At least 2 G but less than 8 G of Methylamine;
 At least 5 KG but less than 20 KG of N-Methylephedrine;
 At least 5 KG but less than 20 KG of N-Methylpseudoephedrine;
 At least 6.3 G but less than 25 G of Nitroethane;
 At least 100 G but less than 400 G of Norpseudoephedrine;
 At least 200 G but less than 800 G of Phenylacetic Acid;
 At least 100 G but less than 400 G of Piperidine;
 At least 3.2 KG but less than 12.8 KG of Piperonal;
 At least 16 G but less than 64 G of Propionic Anhydride;
 At least 3.2 KG but less than 12.8 KG of Safrole;
 At least 4 KG but less than 16 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
 At least 11.4 L but less than 45.4 L of Gamma-butyrolactone;
 At least 7 G but less than 29 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

At least 440 G but less than 726 G of Acetic Anhydride;
 At least 47 KG but less than 82.25 KG of Acetone;
 At least 800 G but less than 1.4 KG of Benzyl Chloride;
 At least 43 KG but less than 75.25 KG of Ethyl Ether;
 At least 48 KG but less than 84 KG of Methyl Ethyl Ketone;
 At least 400 G but less than 700 G of Potassium Permanganate;
 At least 52 KG but less than 91 KG of Toluene.

- (8) **List I Chemicals** **Level 16**
- At least 7.1 G but less than 8.9 G of Benzaldehyde;
 - At least 160 G but less than 200 G of Benzyl Cyanide;
 - At least 1.6 G but less than 2 G of Ergonovine;
 - At least 3.2 G but less than 4 G of Ergotamine;
 - At least 160 G but less than 200 G of Ethylamine;
 - At least 17.6 G but less than 22 G of Hydriodic Acid;
 - At least 10 G but less than 12.5 G of Iodine;
 - At least 2.56 KG but less than 3.2 KG of Isosafrole;
 - At least 1.6 G but less than 2 G of Methylamine;
 - At least 4 KG but less than 5 KG of N-Methylephedrine;
 - At least 4 KG but less than 5 KG of N-Methylpseudoephedrine;
 - At least 5 G but less than 6.3 G of Nitroethane;
 - At least 80 G but less than 100 G of Norpseudoephedrine;
 - At least 160 G but less than 200 G of Phenylacetic Acid;
 - At least 80 G but less than 100 G of Piperidine;
 - At least 2.56 KG but less than 3.2 KG of Piperonal;
 - At least 12.8 G but less than 16 G of Propionic Anhydride;
 - At least 2.56 KG but less than 3.2 KG of Safrole;
 - At least 3.2 KG but less than 4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
 - At least 9.1 L but less than 11.4 L of Gamma-butyrolactone;
 - At least 6 G but less than 7 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;
- List II Chemicals**
- At least 110 G but less than 440 G of Acetic Anhydride;
 - At least 11.75 KG but less than 47 KG of Acetone;
 - At least 200 G but less than 800 G of Benzyl Chloride;
 - At least 10.75 KG but less than 43 KG of Ethyl Ether;
 - At least 12 KG but less than 48 KG of Methyl Ethyl Ketone;
 - At least 100 G but less than 400 G of Potassium Permanganate;
 - At least 13 KG but less than 52 KG of Toluene.
- (9) **List I Chemicals** **Level 14**
- 3.6 KG or more of Anthranilic Acid;
 - At least 5.3 G but less than 7.1 G of Benzaldehyde;
 - At least 120 G but less than 160 G of Benzyl Cyanide;
 - At least 1.2 G but less than 1.6 G of Ergonovine;
 - At least 2.4 G but less than 3.2 G of Ergotamine;
 - At least 120 G but less than 160 G of Ethylamine;
 - At least 13.2 G but less than 17.6 G of Hydriodic Acid;
 - At least 7.5 G but less than 10 G of Iodine;
 - At least 1.92 KG but less than 2.56 KG of Isosafrole;
 - At least 1.2 G but less than 1.6 G of Methylamine;
 - 4.8 KG or more of N-Acetylanthranilic Acid;
 - At least 3 KG but less than 4 KG of N-Methylephedrine;
 - At least 3 KG but less than 4 KG of N-Methylpseudoephedrine;
 - At least 3.8 G but less than 5 G of Nitroethane;
 - At least 60 G but less than 80 G of Norpseudoephedrine;
 - At least 120 G but less than 160 G of Phenylacetic Acid;
 - At least 60 G but less than 80 G of Piperidine;
 - At least 1.92 KG but less than 2.56 KG of Piperonal;
 - At least 9.6 G but less than 12.8 G of Propionic Anhydride;

At least 1.92 KG but less than 2.56 KG of Safrole;
 At least 2.4 KG but less than 3.2 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
 At least 6.8 L but less than 9.1 L of Gamma-butyrolactone;
 At least 4 G but less than 6 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;

List II Chemicals

At least 88 G but less than 110 G of Acetic Anhydride;
 At least 9.4 KG but less than 11.75 KG of Acetone;
 At least 160 G but less than 200 G of Benzyl Chloride;
 At least 8.6 KG but less than 10.75 KG of Ethyl Ether;
 At least 9.6 KG but less than 12 KG of Methyl Ethyl Ketone;
 At least 80 G but less than 100 G of Potassium Permanganate;
 At least 10.4 KG but less than 13 KG of Toluene.

(10) List I Chemicals	Level 12
Less than 3.6 KG of Anthranilic Acid; Less than 5.3 G of Benzaldehyde; Less than 120 G of Benzyl Cyanide; Less than 1.2 G of Ergonovine; Less than 2.4 G of Ergotamine; Less than 120 G of Ethylamine; Less than 13.2 G of Hydriodic Acid; Less than 7.5 G of Iodine; Less than 1.92 KG of Isosafrole; Less than 1.2 G of Methylamine; Less than 4.8 KG of N-Acetylanthranilic Acid; Less than 3 KG of N-Methylephedrine; Less than 3 KG of N-Methylpseudoephedrine; Less than 3.8 G of Nitroethane; Less than 60 G of Norpseudoephedrine; Less than 120 G of Phenylacetic Acid; Less than 60 G of Piperidine; Less than 1.92 KG of Piperonal; Less than 9.6 G of Propionic Anhydride; Less than 1.92 KG of Safrole; Less than 2.4 KG of 3, 4-Methylenedioxyphenyl-2-propanone; Less than 6.8 L of Gamma-butyrolactone; Less than 4 G of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid;	
List II Chemicals Less than 88 G of Acetic Anhydride; Less than 9.4 KG of Acetone; Less than 160 G of Benzyl Chloride; Less than 8.6 KG of Ethyl Ether; Less than 9.6 KG of Methyl Ethyl Ketone; Less than 80 G of Potassium Permanganate; Less than 10.4 KG of Toluene.	

***Notes:**

- (A) Except as provided in Note (B), to calculate the base offense level in an offense that involves two or more chemicals, use the quantity of the single chemical that results

§2D1.11

in the greatest offense level, regardless of whether the chemicals are set forth in different tables or in different categories (*i.e.*, list I or list II) under subsection (d) or (e) of this guideline, as appropriate.

- (B) To calculate the base offense level in an offense that involves two or more chemicals each of which is set forth in the Ephedrine, Pseudoephedrine, and Phenylpropanolamine Quantity Table, (i) aggregate the quantities of all such chemicals, and (ii) determine the base offense level corresponding to the aggregate quantity.
- (C) In a case involving ephedrine, pseudoephedrine, or phenylpropanolamine tablets, use the weight of the ephedrine, pseudoephedrine, or phenylpropanolamine contained in the tablets, not the weight of the entire tablets, in calculating the base offense level.

Commentary

Statutory Provisions: 21 U.S.C. §§ 841(c)(1), (2), (f)(1), 865, 960(d)(1), (2), (3), (4).

Application Notes:

1. Cases Involving Multiple Chemicals.—

- (A) **Determining the Base Offense Level for Two or More Chemicals.**—Except as provided in subdivision (B), if the offense involves two or more chemicals, use the quantity of the single chemical that results in the greatest offense level, regardless of whether the chemicals are set forth in different tables or in different categories (*i.e.*, list I or list II) under this guideline.

Example: The defendant was in possession of five kilograms of ephedrine and 300 grams of hydriodic acid. Ephedrine and hydriodic acid typically are used together in the same manufacturing process to manufacture methamphetamine. The base offense level for each chemical is calculated separately and the chemical with the higher base offense level is used. Five kilograms of ephedrine result in a base offense level of level 36; 300 grams of hydriodic acid result in a base offense level of level 24. In this case, the base offense level would be level 36.

- (B) **Determining the Base Offense Level for Offenses involving Ephedrine, Pseudoephedrine, or Phenylpropanolamine.**—If the offense involves two or more chemicals each of which is set forth in the Ephedrine, Pseudoephedrine, and Phenylpropanolamine Quantity Table, (i) aggregate the quantities of all such chemicals, and (ii) determine the base offense level corresponding to the aggregate quantity.

Example: The defendant was in possession of 80 grams of ephedrine and 50 grams of phenylpropanolamine, an aggregate quantity of 130 grams of such chemicals. The base offense level corresponding to that aggregate quantity is level 30.

- (C) **Upward Departure.**—In a case involving two or more chemicals used to manufacture different controlled substances, or to manufacture one controlled substance by different manufacturing processes, an upward departure may be warranted if the offense level does not adequately address the seriousness of the offense.

2. **Application of Subsection (b)(1).**—“*Firearm*” and “*dangerous weapon*” are defined in the Commentary to §1B1.1 (Application Instructions). The adjustment in subsection (b)(1) should be applied if the weapon was present, unless it is improbable that the weapon was connected with the offense.
3. **Application of Subsection (b)(2).**—Convictions under 21 U.S.C. §§ 841(c)(2) and (f)(1), and 960(d)(2), (d)(3), and (d)(4) do not require that the defendant have knowledge or an actual belief that the listed chemical was to be used to manufacture a controlled substance unlawfully. In a case in which the defendant possessed or distributed the listed chemical without such knowledge or belief, a 3-level reduction is provided to reflect that the defendant is less culpable than one who possessed or distributed listed chemicals knowing or believing that they would be used to manufacture a controlled substance unlawfully.
4. **Application of Subsection (b)(3).**—Subsection (b)(3) applies if the conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d), the Federal Water Pollution Control Act, 33 U.S.C. § 1319(c), the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9603(b), and 49 U.S.C. § 5124 (relating to violations of laws and regulations enforced by the Department of Transportation with respect to the transportation of hazardous material). In some cases, the enhancement under subsection (b)(3) may not adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under §5E1.1 (Restitution) and in fashioning appropriate conditions of supervision under §§5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release).
5. **Application of Subsection (b)(4).**—For purposes of subsection (b)(4), “*mass-marketing by means of an interactive computer service*” means the solicitation, by means of an interactive computer service, of a large number of persons to induce those persons to purchase a controlled substance. For example, subsection (b)(4) would apply to a defendant who operated a web site to promote the sale of Gamma-butyrolactone (GBL) but would not apply to coconspirators who use an interactive computer service only to communicate with one another in furtherance of the offense. “*Interactive computer service*”, for purposes of subsection (b)(4) and this note, has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).
6. **Imposition of Consecutive Sentence for 21 U.S.C. § 865.**—Section 865 of title 21, United States Code, requires the imposition of a mandatory consecutive term of imprisonment of not more than 15 years. In order to comply with the relevant statute, the court should determine the appropriate “total punishment” and, on the judgment form, divide the sentence between the sentence attributable to the underlying drug offense and the sentence attributable to 21 U.S.C. § 865, specifying the number of months to be served consecutively for the conviction under 21 U.S.C. § 865. For example, if the applicable adjusted guideline range is 151–188 months and the court determines a “total punishment” of 151 months is appropriate, a sentence of 130 months for the underlying offense plus 21 months for the conduct covered by 21 U.S.C. § 865 would achieve the “total punishment” in a manner that satisfies the statutory requirement of a consecutive sentence.
7. **Applicability of Subsection (b)(6).**—The applicability of subsection (b)(6) shall be determined without regard to the offense of conviction. If subsection (b)(6) applies, §5C1.2(b) does not apply. See §5C1.2(b)(2) (requiring a minimum offense level of level 17 if the “statutorily required minimum sentence is at least five years”).

§2D1.12

8. **Application of Subsection (c)(1).**—“*Offense involved unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully*,” as used in subsection (c)(1), means that the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), completed the actions sufficient to constitute the offense of unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully.
9. **Offenses Involving Immediate Precursors or Other Controlled Substances Covered Under §2D1.1.**—In certain cases, the defendant will be convicted of an offense involving a listed chemical covered under this guideline, and a related offense involving an immediate precursor or other controlled substance covered under §2D1.1 (Unlawfully Manufacturing, Importing, Exporting, or Trafficking). For example, P2P (an immediate precursor) and methylamine (a listed chemical) are used together to produce methamphetamine. Determine the offense level under each guideline separately. The offense level for methylamine is determined by using §2D1.11. The offense level for P2P is determined by using §2D1.1 (P2P is listed in the Drug Conversion Table under Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)). Under the grouping rules of §3D1.2(b), the counts will be grouped together. Note that in determining the scale of the offense under §2D1.1, the quantity of both the controlled substance and listed chemical should be considered (*see* Application Note 5 in the Commentary to §2D1.1).

Background: Offenses covered by this guideline involve list I chemicals (including ephedrine, pseudoephedrine, and phenylpropanolamine) and list II chemicals. List I chemicals are important to the manufacture of a controlled substance and usually become part of the final product. For example, ephedrine reacts with other chemicals to form methamphetamine. The amount of ephedrine directly affects the amount of methamphetamine produced. List II chemicals are generally used as solvents, catalysts, and reagents.

<i>Historical Note</i>	Effective November 1, 1991 (amendment 371). Amended effective November 1, 1992 (amendment 447); November 1, 1995 (amendment 519); May 1, 1997 (amendment 541); November 1, 1997 (amendment 557); November 1, 2000 (amendments 605 and 606); May 1, 2001 (amendment 611); November 1, 2001 (amendment 625); November 1, 2002 (amendment 646); November 1, 2003 (amendment 661); November 1, 2004 (amendments 667 and 668); November 1, 2005 (amendment 679); November 1, 2007 (amendments 705 and 707); November 1, 2010 (amendments 745 and 746); November 1, 2012 (amendments 763 and 770); November 1, 2014 (amendment 782); November 1, 2015 (amendment 796); November 1, 2018 (amendments 808 and 813).
------------------------	---

§2D1.12. Unlawful Possession, Manufacture, Distribution, Transportation, Exportation, or Importation of Prohibited Flask, Equipment, Chemical, Product, or Material; Attempt or Conspiracy

- (a) Base Offense Level (Apply the greater):
- (1) **12**, if the defendant intended to manufacture a controlled substance or knew or believed the prohibited flask, equipment, chemical, product, or material was to be used to manufacture a controlled substance;
or

LII > U.S. Code > Title 18 > PART II > CHAPTER 227 > SUBCHAPTER A > **§3553**

Quick search by citation:

Title

Section

Go!

18 U.S. Code § 3553 - Imposition of a sentence

U.S. Code Notes

(a) FACTORS TO BE CONSIDERED IN IMPOSING A SENTENCE.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

- (C)** to protect the public from further crimes of the defendant; and
 - (D)** to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3)** the kinds of sentences available;
- (4)** the kinds of sentence and the sentencing range established for—
- (A)** the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—
 - (i)** issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (ii)** that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or
 - (B)** in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);
- (5)** any pertinent policy statement—
- (A)** issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (B)** that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.^[1]
- (6)** the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

(b) APPLICATION OF GUIDELINES IN IMPOSING A SENTENCE.—

(1) IN GENERAL.—

Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

(2) CHILD CRIMES AND SEXUAL OFFENSES.—

(A) ^[2] Sentencing.—In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless—

(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that—

(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, taking account of any amendments to such sentencing guidelines or policy statements by Congress;

(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(III) should result in a sentence different from that described; or

(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.

(c) STATEMENT OF REASONS FOR IMPOSING A SENTENCE.—The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—

(1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal

Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission,^[3] and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

(d) PRESENTENCE PROCEDURE FOR AN ORDER OF NOTICE.—Prior to imposing an order of notice pursuant to section 3555, the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall—

- (1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;
- (2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and
- (3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

(e) LIMITED AUTHORITY TO IMPOSE A SENTENCE BELOW A STATUTORY MINIMUM.—

Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

(f) LIMITATION ON APPLICABILITY OF STATUTORY MINIMUMS IN CERTAIN CASES.—Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846), section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), or section 70503 or 70506 of title 46, the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the

court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that—

(1) the defendant does not have—

(A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines;

(B) a prior 3-point offense, as determined under the sentencing guidelines; and

(C) a prior 2-point violent offense, as determined under the sentencing guidelines;

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury to any person;

(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and

(5) not later than the time of the sentencing hearing, the 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 of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

Information disclosed by a defendant under this subsection may not be used to enhance the sentence of the defendant unless the information relates to a violent offense.

(g) DEFINITION OF VIOLENT OFFENSE.—

As used in this section, the term “violent offense” means a crime of violence, as defined in section 16, that is punishable by imprisonment.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1989; amended Pub. L. 99–570, title I, § 1007(a), Oct. 27, 1986, 100 Stat. 3207–7; Pub. L. 99–646, §§ 8(a), 9(a),

80(a), 81(a), Nov. 10, 1986, [100 Stat. 3593](#), 3619; [Pub. L. 100-182](#), §§ 3, 16(a), 17, Dec. 7, 1987, [101 Stat. 1266](#), 1269, 1270; [Pub. L. 100-690](#), title VII, § 7102, Nov. 18, 1988, [102 Stat. 4416](#); [Pub. L. 103-322](#), title VIII, § 80001(a), title XXVIII, § 280001, Sept. 13, 1994, [108 Stat. 1985](#), 2095; [Pub. L. 104-294](#), title VI, §§ 601(b)(5), (6), (h), Oct. 11, 1996, [110 Stat. 3499](#), 3500; [Pub. L. 107-273](#), div. B, title IV, § 4002(a)(8), Nov. 2, 2002, [116 Stat. 1807](#); [Pub. L. 108-21](#), title IV, § 401(a), (c), (j)(5), Apr. 30, 2003, [117 Stat. 667](#), 669, 673; [Pub. L. 111-174](#), § 4, May 27, 2010, [124 Stat. 1216](#); [Pub. L. 115-391](#), title IV, § 402(a), Dec. 21, 2018, [132 Stat. 5221](#).)



U.S. Code Toolbox

[Law about... Articles from Wex](#)

[Table of Popular Names](#)

[Parallel Table of Authorities](#)

[How current is this?](#)