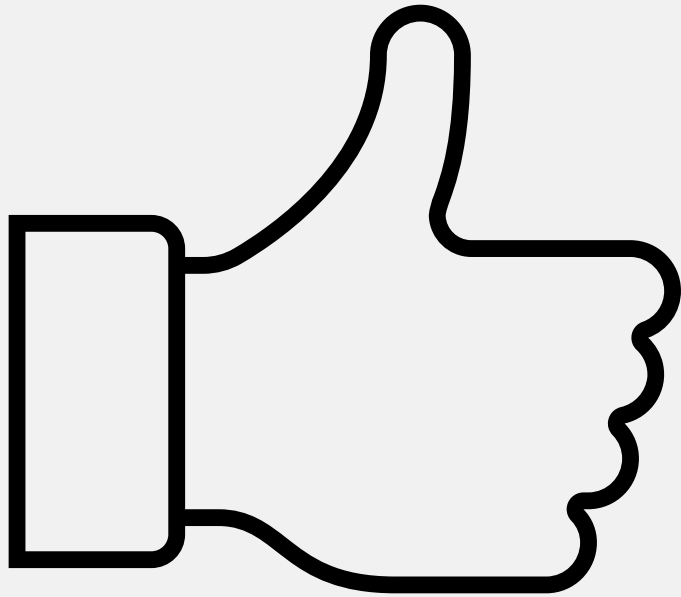


Good Amendments



Improvements



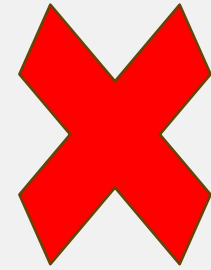
“Simplification”

Supervised Release

Drugs: Mitigating Role

Circuit Conflicts

THREE STEP PROCESS, NOW TWO



Court calculates applicable GL range



Court considers policy statements and commentary re: departures



Court considers 3553(a) factors

PART B — GENERAL APPLICATION PRINCIPLES

§1B1.1. Application Instructions

- (a) STEP ONE: CALCULATION OF GUIDELINE RANGE AND DETERMINATION OF SENTENCING REQUIREMENTS AND OPTIONS UNDER THE GUIDELINES MANUAL— The court shall determine the kinds of sentence and the guideline range as set forth in the guidelines (see 18 U.S.C. § 3553(a)(4)) by applying the provisions of this manual in the following order, except as specifically directed:
- (1) Determine, pursuant to §1B1.2 (Applicable Guidelines), the offense guideline section from Chapter Two (Offense Conduct) applicable to the offense of conviction. See §1B1.2.
 - (2) Determine the base offense level and apply any appropriate specific offense characteristics, cross references, and special instructions contained in the particular guideline in Chapter Two in the order listed.
 - (3) Apply the adjustments as appropriate related to victim, role, and obstruction of justice from Parts A, B, and C of Chapter Three.
 - (4) If there are multiple counts of conviction, repeat steps (1) through (3) for each count. Apply Part D of Chapter Three to group the various counts and adjust the offense level accordingly.
 - (5) Apply the adjustment ~~as appropriate~~ for the defendant's acceptance of responsibility and the reduction pursuant to an early disposition program, as appropriate, from Parts E and F of Chapter Three.
 - (6) Determine the defendant's criminal history category as specified in Part A of Chapter Four. Determine from Parts B and C of Chapter Four any other applicable adjustments.
 - (7) Determine the guideline range in Part A of Chapter Five that corresponds to the offense level and criminal history category determined above.
 - (8) For the particular guideline range, determine from Parts B through G of Chapter Five the sentencing requirements and options related to probation, imprisonment, supervision conditions, fines, and restitution.
 - (9) Apply, as appropriate, Part K of Chapter Five.



§1B1.1

- ~~(b) The court shall then consider Parts H and K of Chapter Five, Specific Offender Characteristics and Departures, and any other policy statements or commentary in the guidelines that might warrant consideration in imposing sentence. See 18 U.S.C. § 3553(a)(5).~~
- ~~(c) The court shall then consider the applicable factors in 18 U.S.C. § 3553(a) taken as a whole. See 18 U.S.C. § 3553(a).~~
- (b) STEP TWO: CONSIDERATION OF FACTORS SET FORTH IN 18 U.S.C. § 3553(a).— After determining the kinds of sentence and guidelines range pursuant to subsection (a) of §1B1.1 (Application Instructions) and 18 U.S.C. § 3553(a)(4) and (5), the court shall consider the other applicable factors in 18 U.S.C. § 3553(a) to determine a sentence that is sufficient, but not greater than necessary, to comply with the purposes of sentencing. Specifically, as set forth in 18 U.S.C. § 3553(a), in determining the particular sentence to be imposed, the court shall also consider—
- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
 - (2) the need for the sentence imposed to meet the purposes of sentencing listed in 18 U.S.C. § 3553(a)(2);
 - (3) the kinds of sentences available;
 - (4) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
 - (5) the need to provide restitution to any victims of the offense.

“SIMPLIFICATION OF THE THREE-STEP PROCESS”

No more departures!!

- Substantial Assistance (5K1.1) and Fast Track (5K3.1) still there—just don’t call them departures anymore
- Everything else deleted—including all 5H and 5K (other than 5K1.1)





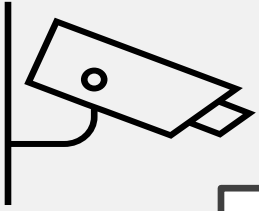
“SIMPLIFICATION”

- Chapter One largely rewritten—new emphasis on 3553(a) factors and the parsimony principle
- Cite the new ch. 1 in sentencing memos!

Ch. 1 Pt. A

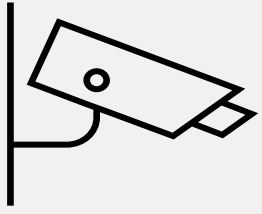
The Commission envisioned and framed this 2025 amendment to be outcome neutral, intending that judges who would have relied upon facts previously identified as a basis for a departure would continue to have the authority to rely upon such facts to impose a sentence outside of the applicable guideline range as a variance under 18 U.S.C. § 3553(a). The removal of departures from the Guidelines Manual does not limit the information courts may consider in imposing a sentence nor does it reflect a view from the Commission that such facts should no longer inform a court for purposes of determining the appropriate sentence.

- Amendment intended to be outcome-neutral, NOT to discourage sentences outside of the Guidelines
- Guide judges to non-guideline sentences through 3553(a)
- Old departures still collected and included in Appendix B



SUPERVISED RELEASE

- **Ch. 5, Pt. D:**
Imposition, Length,
Conditions,
Modifications,
Early Termination
- **Ch. 7:** Violations
of Probation and
Supervised
Release



SUPERVISED RELEASE

CH. 5, PT. D

- New intro: individualized assessment
- No presumption of SR
- No minimum term length
- Conditions no longer “recommended”
- Invitation to modify, **terminate SR early**

CH. 7

- New intro: individualized approach & probation $\neq$ SR
- Old Part B now just for probation
- New Part C for SR, greater emphasis on **rehabilitation** and informal/graduated responses to violations

Individualized Assessment



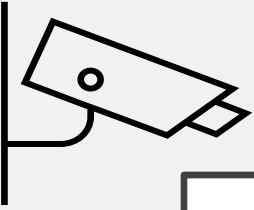
5D: NEW INTRO COMMENTARY!

- Assess factors to decide **if to impose SR** and if so, what **length**
- Depends on **individual needs**
- Must ensure **only those who need** resources get them
- **SR is supposed to be rehabilitative, not punitive!**

PART D — SUPERVISED RELEASE

Introductory Commentary





5D1.1: IMPOSITION OF SR

- **No longer** tells court to impose SR to follow prison sentences of >1 year
- If not required by statute, court can order SR "when warranted by an **individualized assessment** of the need for supervision"
- Directs courts to state reasons for not/imposing a term of SR
- New language in the commentary flagging interaction of SR with FSA time credits

§5D1.1. Imposition of a Term of Supervised Release

- (a) The court shall order a term of supervised release to follow imprisonment—

~~(1) when required by statute (see 18 U.S.C. § 3583(a)) or~~

7. **Evidence-Based Recidivism Reduction Programming.**—Whether a defendant’s sentence includes a term of supervised release may impact the application of time credits earned by the defendant under the First Step Act of 2018, Pub. L. 115–391. The First Step Act of 2018 allows individuals in custody who successfully complete evidence-based recidivism reduction programming or productive activities to earn time credits. *See* 18 U.S.C. § 3632(d)(4)(A). Regarding the application of those time credits, the First Step Act of 2018 provides: “If the sentencing court included as a part of the prisoner’s sentence a requirement that the prisoner be placed on a term of supervised release after imprisonment pursuant to [18 U.S.C. § 3583], the Director of the Bureau of Prisons may transfer the prisoner to begin any such term of supervised release at an earlier date, not to exceed 12 months, based on the application of time credits under [18 U.S.C. § 3632].” 18 U.S.C. § 3624(g)(3).

- (d) The court should state in open court the reasons for imposing or not imposing a term of supervised release. *See* 18 U.S.C. § 3553(c).

5D I.2: TERM LENGTH

- Individualized assessment to determine length of SR: “sufficient, but not greater than necessary”
- **Eliminates the minimum term lengths**
- Maximum term lengths still governed by statute
- **No longer recommends max TSR (life) for sex offenses (which includes CP possession)!**
- Court should state reasons for length in open court

5D1.3: CONDITIONS

(e2) "STANDARD" CONDITIONS (POLICY STATEMENT)

The following are "standard" conditions of supervised release, which the court may modify, expand, or omit in appropriate cases ~~are recommended for supervised release. Several of the conditions are expansions of the conditions required by statute:~~

(d3) "SPECIAL" CONDITIONS (POLICY STATEMENT)

~~The~~ One or more conditions from the following non-exhaustive list of "special" conditions of supervised release ~~are recommended~~ may be appropriate in a particular case, including in the circumstances described and, in addition, may otherwise be appropriate in particular cases ~~therein:~~

From the “Reason for Amendment”

These changes emphasize that any standard, special, or other discretionary conditions of supervised release—*i.e.*, those not required by statute—should be imposed only when warranted by an individualized assessment, reflecting the requirements of 18 U.S.C.

§ 3583(d) and feedback that certain conditions are at times imposed by default. The Commission nonetheless recognizes the value of a list of “standard” conditions that establish basic behavioral expectations and facilitate probation officers’ supervision. Accordingly, the amendment maintains the list of “standard” conditions without change but notes the court’s authority to impose and adjust them as appropriate.

NEW 5D1.4: MODIFICATION, EARLY TERMINATION & EXTENSION OF SR

- Individualized assessment (again)
- Reminds courts they can modify, early terminate, or extend (subject to stat max) terms of SR
- §5D1.4(b): **Early Termination (!)**

(b) **EARLY TERMINATION.**—Any time after the expiration of one year of supervised release and after an individualized assessment of the need for ongoing supervision, the court may terminate the remaining term of supervision and discharge the defendant if the court determines, following consultation with the government and the probation officer, that the termination is warranted by the conduct of the defendant and in the interest of justice. See 18 U.S.C. § 3583(e)(1).

(B) Early Termination.—When determining whether to terminate the remaining term of supervised release under subsection (b), the court may wish to consider such factors as:

- (i) any history of court-reported violations over the term of supervision;
- (ii) the ability of the defendant to lawfully self-manage (*e.g.*, the ability to problem-solve and avoid situations that may result in a violation of a condition of supervised release or new criminal charges);
- (iii) the defendant's substantial compliance with all conditions of supervision;
- (iv) the defendant's engagement in appropriate prosocial activities and the existence or lack of prosocial support to remain lawful beyond the period of supervision;
- (v) a demonstrated reduction in risk level or maintenance of the lowest category of risk over the period of supervision; and
- (vi) whether termination will jeopardize public safety, as evidenced by the nature of the defendant's offense, the defendant's criminal history, the defendant's record while incarcerated, the defendant's efforts to reintegrate into the community and avoid recidivism, any statements or information provided by the victims of the offense, and other factors the court finds relevant.

NEW §7C: SUPERVISED RELEASE

Probation $\neq$ Supervised Release

NEW §7C COMMENTARY

- **Individualized assessment** (again)
- Reminds courts they “**may continue [SR], modify the conditions, extend the term, or revoke**” and impose imprisonment
- Notes **rehabilitative** purpose of SR and “encourages courts—where possible—to consider a wide array of options to respond to non-compliant behavior and violations”
- Reminds courts “**punishment** for new criminal conduct is **not** the primary **goal** of a revocation sentence.”

SCOTUS OPINION ALERT!

ESTERAS V. UNITED STATES

- Q: Can courts consider §3553(a)(2)(A) (“seriousness of the offense,” “respect for the law,” and “just punishment”) when revoking supervised release?
- A: No!

§7C1.3: RESPONSES TO VIOLATIONS

- If revocation required by statute, revoke. But if any other violation, encourages court to conduct an **individualized assessment**, taking into consideration the **grade** of the violation, to determine whether to revoke supervised release.
- **New** language: “Revocation is **generally appropriate** for a Grade A violation, often appropriate for a Grade B violation, and may be appropriate for a Grade C violation.”
- *Commentary*: reminds courts of other options under § 3583, like
extension, modification, revocation, or termination
- *Commentary*: “consider issuing a summons rather than an arrest warrant where appropriate”

§7C1.4: REVOCATION

- Court required to conduct an **individualized assessment** to determine the appropriate length of imprisonment given §7C1.5 table
- Language change: any term of imprisonment “~~shall~~ **generally should be** ordered to be served **consecutively** to any sentence of imprisonment the defendant is serving”
- Updates commentary re: violations of intermittent/community/home confinement

§7C1.5: THE TABLE

- Individualized assessment language added
- But no overhaul of table

A person wearing a white glove holds an open suitcase filled with yellow and black bags. A text box is overlaid on the image.

2DI.I - MITIGATING ROLE



(c) DRUG QUANTITY TABLE

CONTROLLED SUBSTANCES AND QUANTITY*	BASE OFFENSE LEVEL
-------------------------------------	--------------------

- | | |
|---|----------|
| (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 <i>Converted Drug Weight</i> . | Level 38 |
|---|----------|

- | | |
|---|----------|
| (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 <i>Converted Drug Weight</i> . | Level 36 |
|---|----------|

- | | |
|--|----------|
| (3) ● At least 10 KG but less than 30 KG of Heroin;
● At least 50 KG but less than 150 KG of Cocaine; | Level 34 |
|--|----------|

Where do these numbers come from?

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

(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.

- ↑ (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 marihuana on state or federal land or while trespassing on tribal or private land; and (B) the defendant receives an adjustment under §3B1.1 (Aggravating Role), increase by **2** levels.

- ↑ (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.

FROM USSC'S 2011 REPORT TO CONGRESS ON MANDATORY MINIMUMS

- Drug quantity “not closely related” to a person’s functional role in the offense.
- “There was not a strong correlation between base offense level and level of a [person’s] function in the offense.”

[2011 Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System | United States Sentencing Commission](#)
[Ch. 8 Mandatory Minimum Penalties for Drug Offenses]

2D1.1 - MITIGATING ROLE



- Amended mitigating role cap BOL to make it more generous
- Special instruction re: mitigating role in drug cases—expressly intended to increase the use of 3B1.2
- Focus on *function* within the trafficking market

- Primary function is what matters, not most serious conduct
- Type of function determines levels off
- Minimal and minor participant categories are illustrative, not exhaustive (“such as”)
- No exclusions for firearm/violence or otherwise

Minimal participant, -4

Minor participant, -2

(e) Special ~~Instruction~~ Instructions

(2) Application of §3B1.2 (Mitigating Role) to §2D1.1 Cases

(A) Determine whether an adjustment under §3B1.2 (Mitigating Role) applies.

(B) In addition to the circumstances identified in §3B1.2, an adjustment under §3B1.2 is generally warranted if the defendant's primary function in the offense was performing a low-level trafficking function.

(i) An adjustment under §3B1.2(a) is generally warranted if the defendant's primary function in the offense was plainly among the lowest level of drug trafficking functions, such as serving as a courier, running errands, sending or receiving phone calls or messages, or acting as a lookout; or

(ii) an adjustment under §3B1.2(b) is generally warranted if the defendant's primary function in the offense was performing another low-level trafficking function, such as distributing controlled substances in user-level quantities for little or no monetary compensation or with a primary motivation other than profit (e.g., the defendant was otherwise unlikely to commit such an offense and was motivated by an intimate or familial relationship, or by threats or fear to commit the offense).

(2) Application of §3B1.2 (Mitigating Role) to §2D1.1 Cases



For purposes of subsection (e)(2)(B), the provisions of §3B1.2 apply in determining whether a mitigating role adjustment is warranted, except that the adjustment shall apply regardless of whether the offense involved other participants in addition to the defendant, and regardless of whether the defendant was

substantially less culpable than the average participant in the criminal activity. The extent of the adjustment shall be based on the totality of the circumstances and involves a determination that is heavily dependent upon the facts of the particular case.

(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 above level 34, decrease to level 32. If the resulting offense level is greater than level 3230 and the defendant receives the 4-level ("minimal participant") reduction in §3B1.2(a), decrease to level 3230.

DQT 36 or 38
→ 32

DQT 34 → 31

If get 4-point
reduction → 30

(b) Specific Offense Characteristics

* * *

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

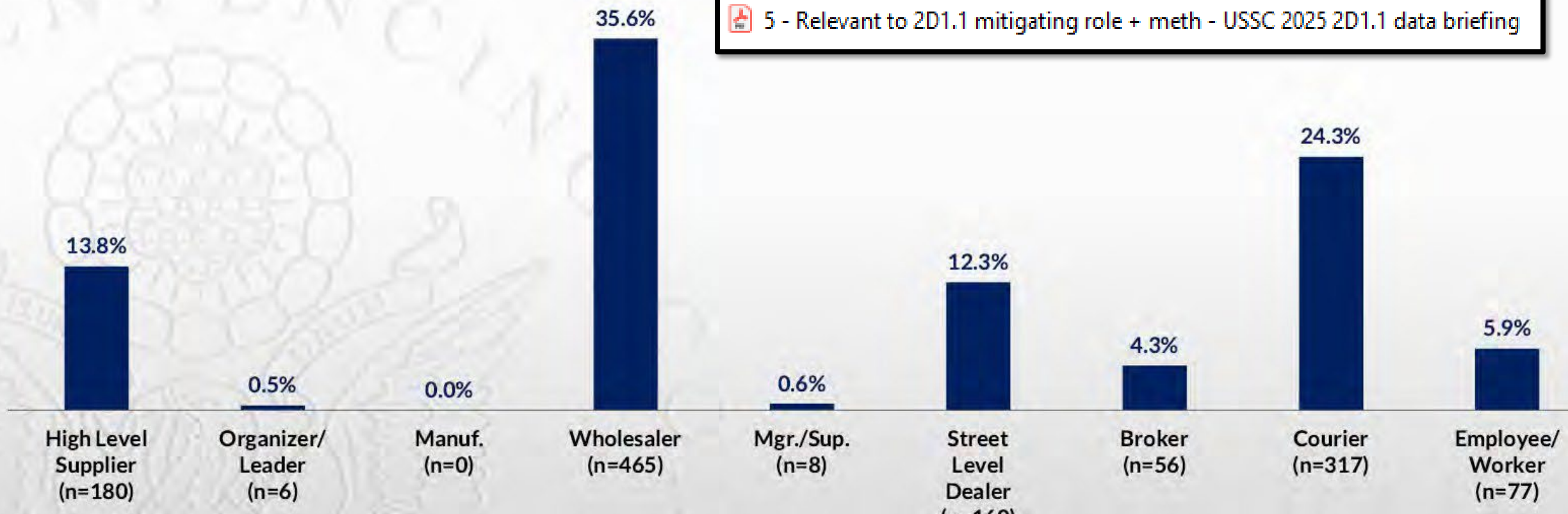
- (A) the defendant was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense;
- (B) the defendant received no monetary compensation from the illegal purchase, sale, transport, or storage of controlled substances;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

decrease by 2 levels.

Individuals' Function in Methamphetamine Trafficking Offenses Fiscal Year 2022 (Sample)

N=1,305

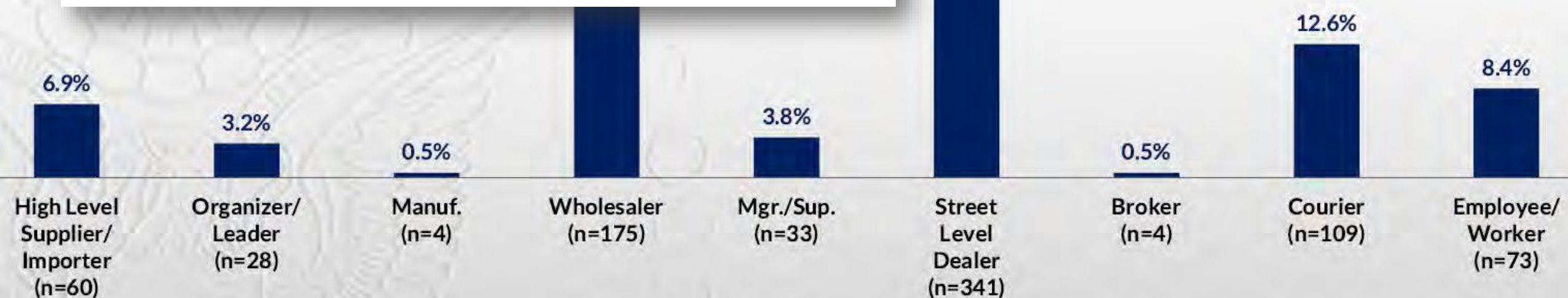
5 - Relevant to 2D1.1 mitigating role + meth - USSC 2025 2D1.1 data briefing



Individuals' Function in Fentanyl and Fentanyl Analogue Trafficking Offenses Fiscal Year 2019 (Sample)

N=868

(ii) An adjustment under §3B1.2(b) is generally warranted if the defendant's primary function in the offense was performing another low-level trafficking function, such as distributing controlled substances in user-level quantities for little or no monetary compensation or with a primary motivation other than profit (e.g., the defendant was otherwise unlikely to commit such an offense and was motivated by an intimate or familial relationship, or by threats or fear to commit the offense).

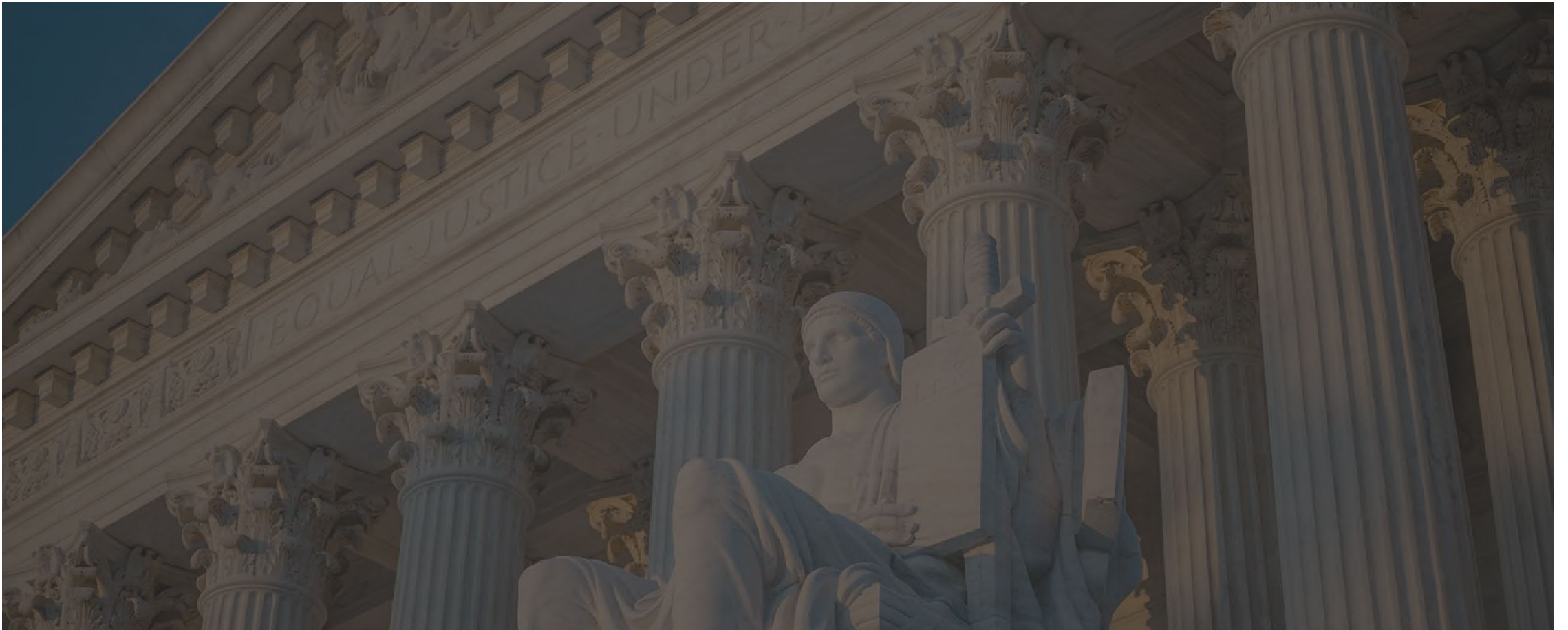


QUOTES FROM RFA

In its written Reason for Amendment, the Commission states that it was concerned that a prior amendment to § 3B1.2—which was also intended “to increase [§ 3B1.2’s] usage”—“did not result in a sustained increase in application of the *mitigating role* adjustment in § 2D1.1 cases.” (U.S.

at 8 (emphasis added).) Instead, the Commission's data showed that “when § 3B1.2 is applied in § 2D1.1 cases, the vast majority of these cases *receive only a 2-level reduction*; 3- and 4-level reductions are rarely applied.” (*Id.* at 8 (emphasis added).) The Commission therefore adopted the upcoming 2025 amendment in order to “*expand*[] the circumstances in which an adjustment under § 3B1.2 is applied in § 2D1.1 cases.” (*Id.* at 8 (emphasis added).)

CIRCUIT CONFLICTS



**CIRCUIT CONFLICT:
“PHYSICAL RESTRAINT” (ROBBERY)**

(4) (A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase  by 4 levels; or (B) if any person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by 2 levels.

WHAT DOES IT MEAN TO PHYSICALLY RESTRAIN?

- Is the psych coercion of holding someone at gunpoint enough to trigger the +2 “physically restrained” enhancement?



- (4) (A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by 4 levels; or (B) if any ~~person was physically restrained~~ person's freedom of movement was restricted through physical contact or confinement, such as by being tied, bound, or locked up, to facilitate commission of the offense or to facilitate escape, increase by 2 levels.

* * *

* * *

- (2) (A) If a firearm was discharged, increase by 7 levels; (B) if a firearm was ~~otherwise used~~ to convey a specific (not general) threat of harm (*e.g.*, pointing the firearm at a specific victim or victims; directing the movement of a specific victim or victims with the firearm) or to make physical contact with a victim (*e.g.*, pistol whip; firearm placed against victim's body), increase by 6 levels; (C) if a firearm was brandished or possessed, increase by 5 levels; (D) if a dangerous weapon was otherwise used, increase by 4 levels; (E) if a dangerous weapon was brandished or possessed, increase by 3 levels; or (F) if a threat of death was made, increase by 2 levels.

* * *



CIRCUIT CONFLICT: “INTERVENING ARREST”

Question:

Whether a traffic stop + citation/summons is an “intervening arrest” for purposes of applying the *single sentence rule* at 4A1.2(a)(2)?

CIRCUIT CONFLICT:
“INTERVENING ARREST”

9th, 3rd, 6th, 11th CIRCUITS =
RIGHT

- *US v. Leal-Felix*, 665 F.3d 1037 (9th Cir. 2011) (en banc)
- *US v. Ley*, 876 F.3d (3d Cir. 2017)
- *US v. Rogers*, 86 F.4th 259 (6th Cir. 2023)
- *US v. Wright*, 862 F.3d 1265 (11th Cir. 2017)

7TH CIRCUIT = WRONG

- *US v. Morgan*, 354 F.3d 621, 624 (7th Cir. 2003)

Part B (Circuit Conflict Concerning Meaning of “Intervening Arrest” in §4A1.2(a)(2))

§4A1.2. Definitions and Instructions for Computing Criminal History

(a) PRIOR SENTENCE

- (1) The term “prior sentence” means any sentence previously imposed upon adjudication of guilt, whether by guilty plea, trial, or plea of *nolo contendere*, for conduct not part of the instant offense.
- (2) If the defendant has multiple prior sentences, determine whether those sentences are counted separately or treated as a single sentence. Prior sentences always are counted separately if the sentences were imposed for offenses that were separated by an intervening arrest (*i.e.*, the defendant is arrested for the first offense prior to committing the second offense). For purposes of this provision, a traffic stop is not an intervening arrest.

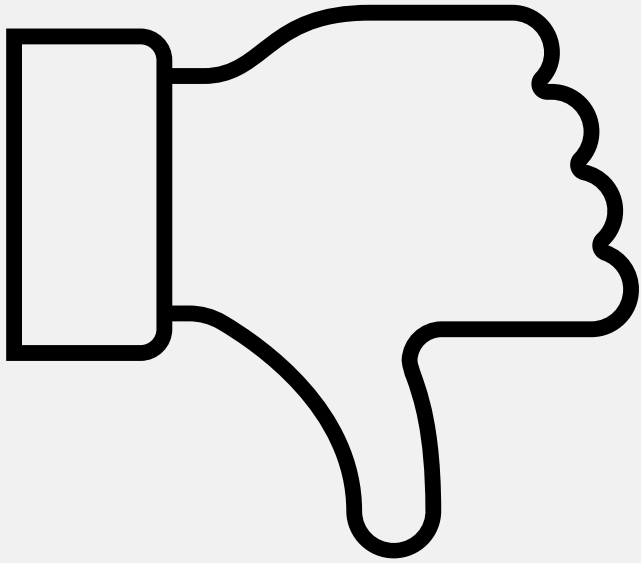
If there is no intervening arrest, prior sentences are counted separately unless (A) the sentences resulted from offenses contained in the same charging instrument; or (B) the sentences were imposed on the same day. Treat any prior sentence covered by subparagraph (A) or (B) as a single sentence. *See also* §4A1.1(d).

For purposes of applying §4A1.1(a), (b), and (c), if prior sentences are treated as a single sentence, use the longest sentence of imprisonment if concurrent sentences were imposed. If consecutive sentences were imposed, use the aggregate sentence of imprisonment.

Bad Amendments



Negative Aspects



Mismarketing
Fentanyl

MCDs

2D1.1 – FAKE PILLS

(13) If the defendant (or substance containing an analogue, increase by mixture or substance of fentanyl analogue, and substance was not the subsection (b)(13)(B),



stance a mixture (+
de) or a fentanyl
ed drug another
opanamide) or a
that such mixture or
g," as used in

OVERDOSES

IN FEDERAL DRUG TRAFFICKING CRIMES

USSC REPORT: “OVERDOSES IN
FEDERAL DRUG TRAFFICKING C
ASES” (MAR. 2025)

- In most cases, both the victim and the person selling the drugs are unaware of the exact substance involved.
- Less than 5% of the people sentenced in an overdose case knowingly misrepresented the drugs they sold.



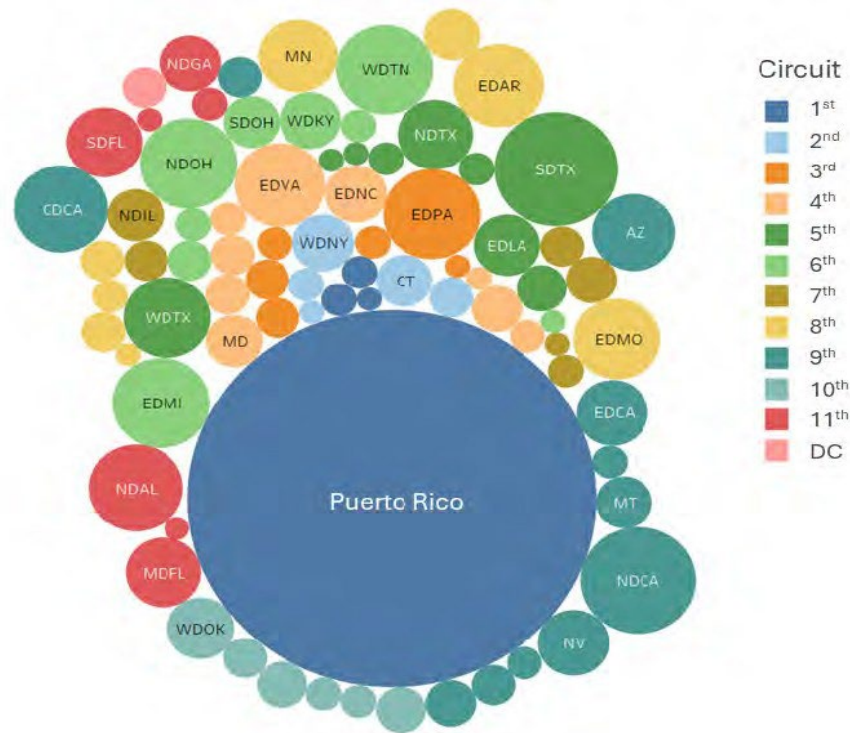
United States Sentencing Commission

March 2025

(13) If the defendant (A) 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; or (B) represented or marketed as a legitimately manufactured drug another mixture or substance containing fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide) or a fentanyl analogue, ~~and acted with willful blindness or conscious avoidance of knowledge~~with reckless disregard that such mixture or substance was not the legitimately manufactured drug, increase by 2 levels. The term “*drug*,” as used in subsection (b)(13)(B), has the meaning given that term in 21 U.S.C. § 321(g)(1).

MCDS AKA “GLOCK SWITCHES”

Total cases under primary guideline §2K2.1 with an 18 U.S.C. §922(o) conviction by district from fiscal years 2019 - 2023



Pistol (left) and pistol with affixed MCD (right)

2K2.1: MCD

(5) (Apply the Greatest) If the defendant—

(A) (i) possessed four or more machinegun conversion devices; or
(ii) transferred or sold any machinegun conversion device to another person, or attempted or conspired to commit such a transfer or sale, increase by 2 levels; or

(B) possessed 30 or more machinegun conversion devices, increase by 4 levels.

For purposes of this subsection, “*machinegun conversion device*” means any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun (*i.e.*, any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger).

Remember EX POST FACTO

BUT..“one book rule”

***USSG 1B1.11**



Questions?





HOTLINE
for CJA Attorneys
800-788-9908



Leslie_Scott@fd.org
Christina_Woehr@fd.org