

U.S. Sentencing Guidelines 2014 Drug Amendments

MINNESOTA SENTENCING GUIDELINES COMMISSION

SEPTEMBER 18, 2014

2014 Drug Sentencing Changes and Rationale

UNITED STATES SENTENCING GUIDELINES

Background: USDOJ's 2013 "Smart on Crime" Initiative

- ▶ "It is time for meaningful sentencing reform."
- ▶ DOJ changed charging policies to avoid "draconian" mandatory-minimum sentences for:
 - ▶ Low-level, nonviolent drug offenders
 - ▶ With no ties to large-scale organizations, gangs, or cartels
- ▶ New guidance to prosecutors regarding recidivist enhancements:
 - ▶ Consider several factors, including use of violence and ties to large-scale criminal organizations, to determine appropriateness
 - ▶ When possible, seek to charge defendant with a drug quantity lower than the triggering amount

Reduced Severity Levels for Drug Trafficking

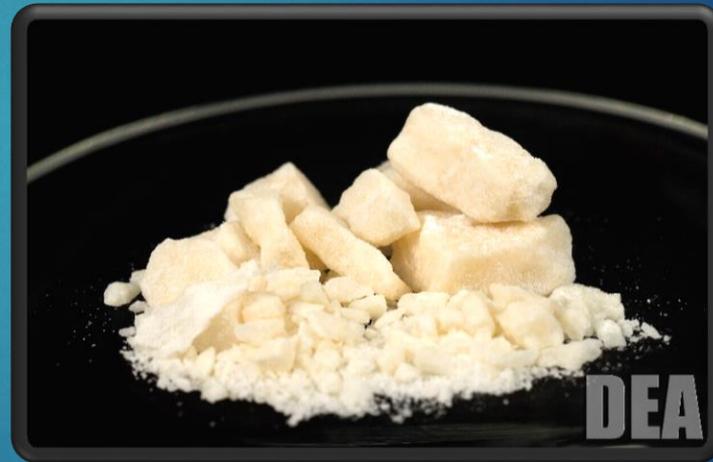
- ▶ In April 2014, the United States Sentencing Commission reduced drug trafficking severity levels by two levels.
 - ▶ Previously, US Sentencing Guidelines exceeded mandatory minimum penalties (to leave incentive for cooperation & plea-bargaining).
 - ▶ After change, range contains mandatory minimum penalty.
 - ▶ Sentencing aggravation still possible (firearm possession, violence use, aggravating role, or repeat/career offenders). Quantity is not the only proxy for seriousness.
- ▶ Chief Judge Saris, USSC Chair: Amendment is “modest, well thought out step to appropriately reduce prison costs and overcapacity. It ... will not undermine public safety.”
- ▶ Changes effective Nov. 1, 2014, unless disapproved by Congress.

Reductions Made Retroactive

- ▶ In July 2014, the United States Sentencing Commission made the April 2014 guidelines reductions retroactive.
- ▶ USSC estimates 46,000 offenders may benefit from retroactive application, and the average sentence reduction would be approximately 18 percent (25 months).
- ▶ Like the initial change, this was intended to address federal prison cost and overcapacity issues.
- ▶ Will not affect prison sentences until November 1, 2015.

Key Rationale: Study of Offender Recidivism After 2007 Amendment

- ▶ In 2007, the U.S. Sentencing Guidelines Commission—
 - ▶ Reduced the severity of crack cocaine by two levels.
 - ▶ Retroactively applied reductions.
- ▶ For those whose sentences were retroactively reduced, average drop was 22 months (20 percent).
- ▶ Study compared offenders given retroactive reductions to those eligible but denied.
- ▶ Findings: No significant differences in recidivism rates or timing of recidivism.



Comparison to Minnesota Sentencing Guidelines

COMMON SEVERITY 6, 8, AND 9 DRUG SALE OFFENSES COMPARED TO
FEDERAL COUNTERPARTS UNDER AMENDED U.S. GUIDELINES

Minnesota vs. U.S. Sentencing Guidelines (Drug Offenses)

Minnesota

- ▶ Two grid rows applicable to drug offenses are a presumptive commit to prison for first-time offenders (severity levels 8 & 9).
- ▶ Those distinguish cocaine, heroin, methamphetamine, opiates, PCP, hallucinogen, & marijuana.
- ▶ Purity is not a factor.
- ▶ Courts may not depart from Guidelines without findings.

United States

- ▶ Thirteen grid rows applicable to drug trafficking offenses carry presumptive imprisonment for more than 12 months for first-time offenders (even-numbered offense levels 14-38).
- ▶ Distinguishes over a dozen drugs.
- ▶ Drug equivalency tables for many more.
- ▶ Various cutoffs; purity is a factor.
- ▶ Guidelines are essentially advisory.

Comparison Method

1. **First-time offenders only.** To simplify comparison, assumed criminal history score of zero, no aggravating or mitigating factors.
2. **Matching the grid rows.** Found comparable sentences on the respective grids for offenders with no criminal history.
3. **Three rows only.** Focused comparison on Minnesota's 3rd, 2nd, and 1st Degree Controlled Substance Crimes. Those offenses show—
 - ▶ The most severe drug offense for which a stayed prison term is presumed with no criminal history score (level 6), and
 - ▶ Those offenses for which a prison commitment is presumed with no criminal history score (level 8 & 9).
4. **Finding the drug amounts.** Compared quantities of selected drugs required to qualify for drug trafficking/sale offenses delineated at the respective severity level.

Challenges With this Comparison Method

- ▶ These offenses are not commonly federally prosecuted at levels as low as are represented in these comparisons.
- ▶ First-time federal offenders who plead guilty may qualify for a reduction of up to five levels (floor: level 17).
- ▶ Federal offenders with two predicate offenses (trafficking or crimes of violence) may qualify for “career offender” status, close to mandatory maximums.



3rd Degree Sale & U.S. Trafficking

Minnesota Severity Level 6: Presumptive stay

- ▶ Cocaine: 0-3 g
- ▶ Heroin: 0-3 g
- ▶ Meth: 0-3 g
- ▶ LSD or MDMA: 10-50 doses
- ▶ Hydrocodone or oxycodone:
0-10 g (fewer than 33 Vicodin pills)
- ▶ Marijuana: 5-25 kg

21

U.S. Offense Level 12: Less than 1 year permissible

- ▶ Cocaine: 0-50 g
 - ▶ Crack 0-2.8 g
- ▶ Heroin: 0-10 g
- ▶ Meth: 0-5 g
 - ▶ Or 0 - 0.5 g ("actual" or "Ice")
- ▶ LSD: 0 - 0.1 g
- ▶ MDMA: 10-20 g
- ▶ Hydrocodone: 5,000-10,000 units
- ▶ Oxycodone: 0.75-1.5 g "actual"
(pure)
- ▶ Marijuana: 5-10 kg

8-14
10-16
12-18

2nd Degree Sale & U.S. Trafficking

12

Minnesota Severity Level 8: 41-57 month range

- ▶ Cocaine: 3-10 g
- ▶ Heroin: 3-10 g
- ▶ Meth: 3-10 g
- ▶ Amphetamine, LSD, or MDMA:
10-50 g or 50-200 doses
- ▶ Hydrocodone or oxycodone:
10-50 g (not more than 33-164
Vicodin pills)
- ▶ Marijuana: 25-50 kg

48 41-57

U.S. Offense Level 22: 41-51 month range

- ▶ Cocaine: 400-500 g
 - ▶ Crack 22.4-28 g
- ▶ Heroin: 80-100 g
- ▶ Amphetamine or meth: 40-50 g
 - ▶ Or 4-5 g ("actual" or "Ice")
- ▶ LSD: 0.8-1 g
- ▶ MDMA: 160-200 g
- ▶ Hydrocodone: 80,000-100,000
units
- ▶ Oxycodone: 12-15 g "actual"
- ▶ Marijuana: 80-100 kg

41-51 46-57

1st Degree Sale & U.S. Trafficking

13

Minnesota Severity Level 9: 74-103 month range

- ▶ Cocaine: 10+ g
- ▶ Heroin: 10+ g
- ▶ Meth: 10+ g
- ▶ Amphetamine, LSD, or MDMA:
50+ g or 200+ doses
- ▶ Hydrocodone or oxycodone:
50+ g (threshold begins below 164
Vicodin pills)
- ▶ Marijuana: 50+ kg

86 74-103

U.S. Offense Level 28: 78-97 mo. range

- ▶ Cocaine: 3,500-5,000 g
 - ▶ Crack: 196-280 g
- ▶ Heroin: 700-1,000 g
- ▶ Amphetamine/meth: 350-500 g
 - ▶ Or 35-50 g ("actual" or "Ice")
- ▶ LSD: 7-10 g
- ▶ MDMA: 1,400-2,000 g
- ▶ Hydrocodone: 700,000-1 million
units
- ▶ Oxycodone: 105-149 g "actual"
- ▶ Marijuana: 700-1,000 kg

78-97 87-108

Conclusions

- ▶ For offenders with no criminal history and no aggravating or mitigating factors:
 - ▶ Minnesota's weight cutoffs for cocaine, heroin, amphetamine, methamphetamine, hydrocodone, and marijuana sale are lighter than the new federal cutoffs.
 - ▶ Minnesota's weight cutoffs for LSD sale are generally heavier than the new federal cutoffs.
- ▶ Minnesota's top tier for drug sale encompasses a broader weight range than the federal guidelines.
- ▶ USSC likely has greater flexibility to make direct changes to the weight ranges than the MSGC.