

**UNITED STATES SENTENCING COMMISSION**

**Sentencing Guidelines for United States Courts**

**AGENCY:** United States Sentencing Commission

**ACTION:** Notice of temporary, emergency amendment to sentencing guidelines, policy statements, and commentary.

**SUMMARY:** Pursuant to the Anabolic Steroid Control Act of 2004, Pub. L. 108-358 (the "ASC Act") and the United States Parole Commission Extension and Sentencing Commission Authority Act of 2005, Pub. L. 109-76, the Commission hereby gives notice of a temporary, emergency amendment to the sentencing guidelines, policy statements, and commentary. This notice sets forth the temporary, emergency amendment and the reason for the amendment.

**DATES:** The Commission has specified an effective date of March 27, 2006, for the emergency amendment set forth in this notice.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer,  
Telephone: (202) 502-4590.

**SUPPLEMENTARY INFORMATION:** The United States Parole Commission Extension and Sentencing Commission Authority Act of 2005 requires the Commission, under emergency amendment authority, to implement section 3 of the ASC Act no later than 180 days after the date of enactment of the United States Parole Commission Extension and Sentencing Commission Authority Act of 2005. Accordingly, the Commission is required to promulgate a temporary, emergency amendment by March 27, 2006.

The temporary, emergency amendment set forth in this notice also may be accessed through the Commission's website at [www.ussc.gov](http://www.ussc.gov).

**AUTHORITY:** 28 U.S.C. § 994(a), (o), (p), (x); section 105 of Pub. L. 109–9; and Pub. L. 109–76.

Ricardo H. Hinojosa,  
Chair

1. Amendment: Section 2D1.1 is amended by redesignating subsections (b)(6) and (b)(7) as subsections (b)(8) and (b)(9), respectively; and by inserting the following after subsection (b)(5):

"(6) If the offense involved the distribution of an anabolic steroid and a masking agent, increase by 2 levels.

(7) If the defendant distributed an anabolic steroid to an athlete, increase by 2 levels."

Section 2D1.1(c) is amended in the "\*Notes to Drug Quantity Table" in subdivision (F) by striking "(except anabolic steroids)"; and by adding at the end the following:

"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 mg of an anabolic steroid is one 'unit'."

Section 2D1.1(c) is amended in the "\*Notes to the Drug Quantity Table" by striking subdivision (G); and by redesignating subdivisions (H) through (J) as subdivisions (G) through (I), respectively.

The Commentary to §2D1.1 captioned "Application Notes" is amended in the first paragraph of Note 8 by inserting "Interaction with §3B1.3.—" before "A defendant who"; by striking "enhancement" and inserting "adjustment"; and by adding at the end the following:

"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."

The Commentary to §2D1.1 captioned "Application Notes" is amended in Notes 19 and 20 by striking "(b)(6)" each place it appears and inserting "(b)(8)"; and in Note 21 by striking "(b)(7)" each place it appears and inserting "(b)(9)".

The Commentary to §2D1.1 captioned "Application Notes" is amended by adding at the end the following:

"24. Application of Subsection (b)(6).—For purposes of subsection (b)(6), ‘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.

25. Application of Subsection (b)(7).—For purposes of subsection (b)(7), ‘athlete’

means an individual who participates in an athletic activity conducted by (i) an intercollegiate athletic association or interscholastic athletic association; (ii) a professional athletic association; or (iii) an amateur athletic organization."

The Commentary to §2D1.1 captioned "Background" is amended in the ninth paragraph by striking "(b)(6)(A)" and inserting "(b)(8)(A)"; and in the last paragraph by striking "(b)(6)(B) and (C)" and inserting "(b)(8)(B) and (C)".

Reason for Amendment: This amendment implements the directive in the United States Parole Commission Extension and Sentencing Commission Authority Act of 2005, Pub. L. 109–76, which required the Commission, under emergency amendment authority, to implement section 3 of the Anabolic Steroid Control Act of 2004, Pub. L. 108–358 (the "ASC Act"). The ASC Act directed the Commission to "review the Federal sentencing guidelines with respect to offenses involving anabolic steroids" and "consider amending the...guidelines to provide for increased penalties with respect to offenses involving anabolic steroids in a manner that reflects the seriousness of such offenses and the need to deter anabolic steroid trafficking and use...."

The amendment implements the directives by increasing the penalties for offenses involving anabolic steroids. It does so by changing the manner in which anabolic steroids are treated under §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or

Conspiracy). The amendment eliminates the sentencing distinction between anabolic steroids and other Schedule III substances when the steroid is in a pill, capsule, tablet, or liquid form. For anabolic steroids in other forms (e.g., patch, topical cream, aerosol), the amendment instructs the court that it shall make a reasonable estimate of the quantity of anabolic steroid involved in the offense, and in making such estimate, the court shall consider that each 25 mg of anabolic steroid is one "unit".

In addition, the amendment addresses two harms often associated with anabolic steroid offenses by providing new enhancements in §2D1.1(b)(6) and (b)(7). Subsection (b)(6) provides a two-level enhancement if the offense involved the distribution of an anabolic steroid and a masking agent. Subsection (b)(7) provides a two-level enhancement if the defendant distributed an anabolic steroid to an athlete. Both enhancements address congressional concern with distribution of anabolic steroids to athletes, particularly the impact that steroids distribution and steroids use has on the integrity of sport, either because of the unfair advantage gained by the use of steroids or because of the concealment of such use.

The amendment also amends Application Note 8 of §2D1.1 to provide that an adjustment under §3B1.3 (Abuse of Position of Trust or Use of Special Skill) ordinarily would apply in the case of a defendant who used his or her position as a coach to influence an athlete to use an anabolic steroid.