

# Appendix A

## MODEL GUIDELINE AMENDMENT IMPLEMENTING RECOMMENDATIONS SET FORTH IN CHAPTER 8<sup>1</sup>

§2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); **Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals**; Attempt or Conspiracy

\* \* \*

(b) Specific Offense Characteristics

(1) ~~If a dangerous weapon (including a firearm) was possessed, increase by 2 levels.~~

**(Apply the greatest):**

**(A) If the defendant discharged a firearm, increase by 6 levels.**

**(B) If (i) the defendant (I) brandished or otherwise used a dangerous weapon (including a firearm); or (II) possessed a firearm described in 18 U.S.C. § 921(a)(30) or 26 U.S.C. § 5845(a); or (ii) eight or more firearms were possessed, increase by 4 levels.**

**(C) If a dangerous weapon (including a firearm) was possessed, increase by 2 levels.**

(2) ~~If the offense involved bodily injury other than bodily injury that resulted from the use of the controlled substance, increase the offense level according to the seriousness of the injury:~~

Degree of Injury

Increase in Level

**(A) Bodily Injury**

**add 2 levels**

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<sup>1</sup> This amendment assumes that Congress increases the five-year mandatory minimum threshold quantity to 25 grams for crack cocaine offenses, and the ten-year mandatory minimum threshold quantity to 250 grams.

- (B) Serious Bodily Injury add **4** levels
- (C) Permanent or Life-Threatening Bodily Injury add **6** levels.

The cumulative adjustments from subsections (b)(1) and (b)(2) shall not exceed **10** levels.

- (3) If the defendant (A) was convicted of an offense under 21 U.S.C. § 849, § 859, § 860, or § 861; (B) distributed a controlled substance to a pregnant individual knowing, or having a reasonable cause to believe, that the individual was pregnant at that time; (C) distributed a controlled substance to a minor individual knowing, or having a reasonable cause to believe, that the individual was a minor at that time; or (D) used a minor individual to commit the offense or to assist in avoiding detection or apprehension for the offense, increase by **2** levels. If the offense level is less than **26**, increase to level **26**.

~~(2)~~(4) \* \* \*

~~(3)~~(5) \* \* \*

- ~~(4)~~(6) If ~~the defendant~~ (A) ~~the offense involved the importation of amphetamine or methamphetamine or the manufacture of amphetamine or methamphetamine~~ (i) imported a controlled substance, or (ii) manufactured a controlled substance from listed chemicals that the defendant knew were imported unlawfully;; and (B) ~~the defendant is not subject to~~ **does not receive** an adjustment under §3B1.2 (Mitigating Role), increase by **2** levels.

~~(5)~~(7) \* \* \*

- (8) If the defendant committed any part of the instant offense after sustaining one felony conviction of a controlled substance offense, increase by **2** levels.

~~(6)~~(9) \* \* \*

(c) DRUG QUANTITY TABLE

Controlled Substances and Quantity\*

Base Offense Level

- (1) ● 30 KG or more of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 38**  
● 150 KG or more of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);  
● ~~1.5~~**7.5** KG or more of Cocaine Base;  
● 30 KG or more of PCP, or 3 KG or more of PCP (actual);  
● 15 KG or more of Methamphetamine, or 1.5 KG or more of Methamphetamine (actual), or 1.5 KG or more of "Ice";

\* \* \*

- (2) ● At least 10 KG but less than 30 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 36**  
● At least 50 KG but less than 150 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);  
● At least ~~500 G~~**2.5 KG** but less than ~~1.5~~**7.5** 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 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";

\* \* \*

- (3) ● At least 3 KG but less than 10 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 34**  
● At least 15 KG but less than 50 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);  
● At least ~~150~~**750** G but less than ~~500 G~~**2.5 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";

\* \* \*

- (4) ● At least 1 KG but less than 3 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 32**  
● At least 5 KG but less than 15 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);  
● At least ~~50~~**250** G but less than ~~150~~**750** 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";

\* \* \*

- (5) ● At least 700 G but less than 1 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 30**  
● At least 3.5 KG but less than 5 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);  
● At least ~~35~~175 G but less than ~~50~~250 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";

\* \* \*

- (6) ● At least 400 G but less than 700 G of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 28**  
● At least 2 KG but less than 3.5 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);  
● At least ~~20~~100 G but less than ~~35~~175 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";

\* \* \*

- (7) ● At least 100 G but less than 400 G of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 26**  
● At least 500 G but less than 2 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);  
● At least ~~5~~25 G but less than ~~20~~100 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";

\* \* \*

- (8) ● At least 80 G but less than 100 G of Heroin (or the equivalent amount of other Schedule I or II Opiates); **Level 24**  
● At least 400 G but less than 500 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);  
● At least ~~4~~20 G but less than ~~5~~25 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";

\* \* \*

- (9) ● At least 60 G but less than 80 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
- At least 300 G but less than 400 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
  - At least ~~3~~15 G but less than ~~4~~20 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";

**Level 22**

\* \* \*

- (10) ● At least 40 G but less than 60 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
- At least 200 G but less than 300 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
  - At least ~~2~~10 G but less than ~~3~~15 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";

**Level 20**

\* \* \*

- (11) ● At least 20 G but less than 40 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
- At least 100 G but less than 200 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
  - At least ~~1~~5 G but less than ~~2~~10 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";

**Level 18**

\* \* \*

- (12) ● At least 10 G but less than 20 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
- At least 50 G but less than 100 G of Cocaine (or the equivalent amount of

**Level 16**

other Schedule I or II Stimulants);

- At least ~~500 MG~~ **2.5 G** but less than ~~±~~ **5 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";

\* \* \*

- (13) ● At least 5 G but less than 10 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
- At least 25 G but less than 50 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
  - At least ~~250 MG~~ **1.25 G** but less than ~~500 MG~~ **2.5 G** of Cocaine Base;
  - At least 5 G but less than 10 G of PCP, or at least 500 MG but less than 1 G of PCP (actual);
  - At least 2.5 G but less than 5 G of Methamphetamine, or at least 250 MG but less than 500 MG of Methamphetamine (actual), or at least 250 MG but less than 500 MG of "Ice";

**Level 14**

\* \* \*

- (14) ● Less than 5 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);
- Less than 25 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
  - Less than ~~250 MG~~ **1.25 G** of Cocaine Base;
  - Less than 5 G of PCP, or less than 500 MG of PCP (actual);
  - Less than 2.5 G of Methamphetamine, or less than 250 MG of Methamphetamine (actual), or less than 250 MG of "Ice";

**Level 12**

\* \* \*

Commentary

Statutory Provisions: 21 U.S.C. §§ 841(a), (b)(1)-(3), (7), **849, 859, 860, 861**, 960(a), (b); 49 U.S.C. § 46317(b). For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

\* \* \*

3. *Definitions of "firearm" and "dangerous weapon" are found in the Commentary to §1B1.1 (Application Instructions). The enhancement for weapon possession reflects the increased danger of violence when drug traffickers possess weapons. The adjustment 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 his 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), 2D1.12(c)(1), and 2D2.1(b)(1).

Application of Subsection (b)(1).—

(A) Definitions.—For purposes of this subsection:

"Brandished", "dangerous weapon", "firearm", and "otherwise used" have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).

"A firearm described in 18 U.S.C. 921(a)(30)" does not include a weapon described in 18 U.S.C. § 922(v)(3).

(B) Application of Subsections (b)(1)(A) and (b)(1)(B)(i).—Under subsections (b)(1)(A) and (b)(1)(B)(i), the defendant is accountable for the defendant's own conduct and for conduct that he aided or abetted, counseled, commanded, induced, procured, or willfully caused.

(C) Possession of Dangerous Weapon or Firearm.—Subsections (b)(1)(B)(i)(II), (b)(1)(B)(ii), and (b)(1)(C) apply if a dangerous weapon or firearm was present, unless it is clearly improbable that the dangerous weapon or firearm was connected with the offense. For example, the enhancement would not apply if the defendant, arrested at his residence, had an unloaded hunting rifle in the closet.

\* \* \*

[18. Application of Subsection (b)(6).—

(A) In General.—Under subsection (b)(6), the defendant is accountable for the defendant's own conduct and for conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused. [This enhancement ordinarily would not apply, for example, to a "courier" or "mule" whose role in the offense was limited to transporting the controlled substance under the direction of another person.]

(B) Non-applicability of Subsection (b)(6).—If the offense involved importation of ~~amphetamine or methamphetamine~~ a controlled substance, and an adjustment from subsection (b)(2) applies, do not apply subsection (b)(~~4~~)(5).]

\* \* \*

22. Subsection (b)(2) Definitions.—For purposes of subsection (b)(2), "bodily injury", "permanent or life-threatening bodily injury", and "serious bodily injury" have the meaning given those terms in Application Note 1 of §1B1.1 (Application Instructions).

23. Non-applicability of §3B1.4 in Certain Instances.—If the conduct that forms the basis for an enhancement under subsection (b)(3) is the only conduct that forms the basis for an adjustment under §3B1.4 (Using a Minor to Commit a Crime), do not apply that adjustment under §3B1.4.

24. Application of Subsection (b)(8).—

(A) Definitions.—For purposes of this subsection:

*"Controlled substance offense" has the meaning given that term in §4B1.2(b) and Application Note 1 of the Commentary to §4B1.2 (Definitions of Terms Used in Section 4B1.1).*

*"Felony conviction" means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen years or older is an adult conviction. A conviction for an offense committed prior to age eighteen years is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (e.g., a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).*

- (B) Qualifying Prior Felony Conviction and Computation of Criminal History Points.—*Subsection (b)(8) applies only to a prior felony conviction that receives criminal history points under §4A1.1(a), (b), or (c). Accordingly, this enhancement does not apply if the prior felony conviction is part of relevant conduct for the instant offense or if the prior felony conviction is outside the applicable time periods set forth in §4A1.2. See §1B1.3, comment. (n. 8), §§4A1.1, §4A1.2. A prior felony conviction that results in application of subsection (b)(8) also is counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).*

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~~§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).~~

~~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 16 (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 17 (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:

\* \* \*

**§2D2.1. Unlawful Possession; Attempt or Conspiracy**

\* \* \*

(b) Cross References

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- (1) If the defendant is convicted of possession of more than 5 grams of a mixture or substance containing cocaine base, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) as if the defendant had been convicted of possession of that mixture or substance with intent to distribute.
- (2)(1) If the offense involved possession of a controlled substance in a prison, correctional facility, or detention facility, apply §2P1.2 (Providing or Possessing Contraband in Prison).

Commentary

\* \* \*

*Background:* Mandatory (statutory) minimum penalties for several categories of cases, ranging from fifteen days' to five years' imprisonment, are set forth in 21 U.S.C. § 844(a). When a mandatory minimum penalty exceeds the guideline range, the mandatory minimum becomes the guideline sentence. See §5G1.1(b). Note, however, that 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).

*Section 2D2.1(b)(1) provides a cross reference to §2D1.1 for possession of more than five grams of a mixture or substance containing cocaine base, an offense subject to an enhanced penalty under Section 6371 of the Anti-Drug Abuse Act of 1988. Other cases for which enhanced penalties are provided under Section 6371 of the Anti-Drug Abuse Act of 1988 (e.g., for a person with one prior conviction, possession of more than three grams of a mixture or substance containing cocaine base, for a person with two or more prior convictions, possession of more than one gram of a mixture or substance containing cocaine base) are to be sentenced in accordance with §5G1.1(b).*

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**APPENDIX A - STATUTORY INDEX**

<del>21 U.S.C. § 845</del>	<del>2D1.2</del>
<del>21 U.S.C. § 845a</del>	<del>2D1.2</del>
<del>21 U.S.C. § 845b</del>	<del>2D1.2</del>
21 U.S.C. § 846	2D1.1, <del>2D1.2</del> , 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2, 2D3.1, 2D3.2 * * *
21 U.S.C. § 849	<del>2D1.2</del> 2D1.1 * * *
21 U.S.C. § 859	<del>2D1.2</del> 2D1.1
21 U.S.C. § 860	<del>2D1.2</del> 2D1.1
21 U.S.C. § 861	<del>2D1.2</del> 2D1.1 * * *
21 U.S.C. § 963	2D1.1, <del>2D1.2</del> , 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2, 2D3.1, 2D3.2