

five kilos of cocaine as for the defendant who distributes five kilos over an extended period in fifty gram amounts. This proposal will add offense level increases for large drug quantities, while limiting the impact of drug amount aggregation over time. This structure is designed to target the mid-level dealers and kingpins associated with large amounts, as Congress intended.

Proposed Amendment: Section 2D1.1 is deleted in its entirety and the following inserted in lieu thereof:

[Option 1: "§ 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) 20–28, if the substance is heroin or any other Schedule I or II opiate or opium derivative, cocaine, cocaine base, or an analogue of these; or

(2) 18–26, if the substance is marijuana, hashish, methamphetamine, PCP, LSD, or any Schedule I or II substance not described in subsection (a)(1); or

(3) 10–18, if the substance is any substance not described in subsections (a)(1) or (a)(2).

(b) Specific Offense Characteristics

(1) If the offense involved multiple drug transactions and the defendant's involvement continued for a period of more than [60] [90] days, increase by 2 levels.

(2) If the defendant (or another participant that the defendant directed or induced):

(A) discharged a firearm, increase by 7 levels;

(B) otherwise used a firearm, increase by 6 levels;

(C) brandished, displayed, or possessed a firearm, increase by 5 levels;

(D) otherwise used a dangerous weapon, increase by 4 levels;

(E) brandished, displayed, or possessed a dangerous weapon, increase by 3 levels; or

(F) made an express threat of death, increase by 2 levels.

(3) If the weapon involved was a firearm or destructive device of a type listed in 26 U.S.C. § 5845(a), increase by 2 levels.

(4) If the defendant (or another participant that the defendant directed or induced) caused any person to sustain bodily injury, increase the offense level according to the seriousness of the injury:

Degree of bodily injury	Increase in level
(B) Serious Bodily Injury	Add 4.
(C) Permanent or Life-Threatening Bodily Injury.	Add 6.

Provided, that the cumulative adjustments from (2) and (4) shall not exceed 11 levels.

(5) If the defendant functioned in the offense as a (apply the greater):

(A) leader or organizer, increase by 4 levels; or

(B) manager or supervisor, increase by 2 levels.

(6) If the defendant qualifies for the adjustment from subsection (b)(5)(A), and the defendant committed the offense in concert with the number of other participants listed below, increase as follows (apply the greatest):

Number of participants	Increase in level
(A) 30 or more	Add 6.
(B) 15–29	Add 4.
(C) 5–14	Add 2.

(7) If the defendant functioned in the offense as a peripheral, decrease by 2 levels.

(8) 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, or (B) 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.

(d) Cross Reference

(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).

Commentary

Statutory Provisions: 21 U.S.C. §§ 841(a), (b)(1)–(3), 960(a), (b). For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. The base offense level is determined on the basis of the most serious drug type involved in the offense. Accordingly, types of drugs not specified in the count of conviction may be considered in determining the offense level. See § 1B1.3(a)(2) (Relevant Conduct).

2. Do not apply the adjustments for § 3B1.1 (Aggravating Role) and § 3B1.2 (Mitigating Role) because adjustments for culpability have been incorporated into specific offense characteristics in § 2D1.1.

3. 'Firearm,' 'dangerous weapon,' 'otherwise used,' 'brandished,' 'bodily injury,' 'serious bodily injury,' and 'permanent or life-threatening bodily injury' are defined in the Commentary to § 1B1.1 (Application Instructions). The term 'participant' is defined in the Commentary to § 3B1.1 (Aggravating Role).

4. Firearm or destructive device 'listed in 26 U.S.C. § 5845(a)' includes: (i) any short-barreled rifle or shotgun or any weapon made therefrom; (ii) a machinegun; (iii) a silencer; (iv) a destructive device; or (v) any 'other weapon,' as that term is defined by 26 U.S.C. § 5845(e). A firearm listed in 26 U.S.C. § 5845(a) does not include unaltered handguns or regulation-length rifles or shotguns. For a more detailed definition, refer to 26 U.S.C. § 5845.

5. The terms 'leader' or 'organizer' as used in subsection (b)(5)(A), refer to defendants who act as the principal administrator, organizer, or leader of the criminal activity or as one of several such principal administrators, organizers, or leaders. Such defendants are distinguished by their participation in the planning and organization of the offense, the degree of control and authority exercised over others, a claimed right to a larger share of the fruits of the crime, the exercise of decision-making authority, and the recruitment of accomplices. Leaders and organizers typically would include defendants who act as:

a. high-level dealers—defendants who purchase or import drugs and distribute drugs at the wholesale level (to other high-level or mid-level drug dealers);

b. mid-level dealers—defendants who distribute at the wholesale level (to other mid-level and street-level dealers);

c. manufacturers/growers—defendants who grow, cultivate, or manufacture controlled substances for wholesale distribution and have an ownership interest in the controlled substance; and

d. financiers—defendants who provide money for purchase, importation, manufacture, cultivation, transportation, or distribution of drugs at the wholesale level.

6. The terms 'manager' and 'supervisor' as used in subsection (b)(5)(B), refer to defendants who provide material supervision or management of other participants. Such defendants have some decision-making authority, but primarily implement the

Degree of bodily injury	Increase in level
(A) Bodily Injury	Add 2.