

decisions and directives of the leader(s) or organizer(s). Managers and supervisors typically would include defendants who act as:

a. lieutenants—defendants who implement the decisions and directives of a leader or organizer by directing the activities of other participants.

Note: The terms 'manager' and 'supervisor' are not intended to apply to defendants who exercise limited supervision over participants with equal or lesser roles and whose overall function within the offense is not one of material supervision or management. For example, a defendant whose only function was to off-load a single large shipment of marijuana, and who supervised other off-loaders of that shipment should not be considered a 'supervisor' under this provision.

7. The term 'peripheral' as used in subsection (b)(7), refers to defendants who perform a limited, low-level function in the criminal activity. Such defendants normally are among the least culpable of those involved in the conduct of the group. 'Peripherals' typically do not have any material decision-making authority, do not own the controlled substance or finance any part of the offense, sell the controlled substance or play a substantial part in negotiating the terms of the sale. Defendants who qualify for an adjustment from subsection (b)(5), subsection (b)(8)(B), or § 3B1.3 (Abuse of a Position of Trust or Use of Special Skill) do not qualify as a 'peripheral.' Peripherals typically would include defendants who act as:

a. off-loaders, deck-hands—defendants who perform the physical labor required to put large quantities of drugs onto some form of transportation or into storage or hiding, or who act as crew members on vessels or aircraft used to transport drugs;

b. go-fers—defendants who generally have limited or no contact with drugs. These defendants run errands, answer the telephone, take messages, receive packages, and provide early warnings during meetings or drug exchanges; and

c. enablers—defendants who have a passive role in the offense, such as knowingly permitting unlawful activity to take place without acting affirmatively to further such activity. Enablers may be coerced or unduly influenced to play such a function (e.g., a parent or grandparent threatened with displacement from a home unless they permit the activity to take place), or may do so as a favor with little or no compensation.

8. The statute and guideline also apply to 'counterfeit' substances, which are defined in 21 U.S.C. § 802 to mean controlled substances that are falsely

labeled so as to appear to have been manufactured or distributed legitimately.

9. Distribution of 'a small amount of marijuana for no remuneration,' 21 U.S.C. § 841(b)(4), is treated as simple possession, to which § 2D2.1 applies.

10. Where a mandatory minimum sentence applies, this mandatory minimum sentence may be 'waived' and a lower sentence imposed (including a sentence below the applicable guideline range), as provided in 28 U.S.C. § 994(n), by reason of a defendant's 'substantial assistance in the investigation or prosecution of another person who has committed an offense.' See § 5K1.1 (Substantial Assistance to Authorities).

11. A defendant who used special skills in the commission of the offense may be subject to an enhancement under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). Certain professionals often occupy essential positions in drug trafficking schemes. These professionals include doctors, pilots, boat captains, financiers, bankers, attorneys, chemists, accountants, and others whose special skill, trade, profession, or position may be used to significantly facilitate the commission of a drug offense. However, if subsection (b)(8)(B) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

12. In an offense involving negotiation to traffic in a controlled substance, the type of drug under negotiation in an uncompleted distribution shall be used to calculate the applicable base offense level.

13. The base offense level is determined by the type of controlled substance and the schedule of that substance as listed in 21 C.F.R. § 1308.13–15. Certain pharmaceutical preparations are classified as Schedule III, IV, or V controlled substances by the Drug Enforcement Administration under 21 C.F.R. § 1308.13–15 even though they contain a small amount of a Schedule I or II controlled substance. For example, Tylenol 3 is classified as a Schedule III controlled substance even though it contains a small amount of codeine, a Schedule II opiate. For the purposes of the guidelines, the classification of the controlled substance under 21 C.F.R. § 1308.13–15 is the appropriate classification.

14. The quantity of drugs in the offense, when either extremely large or extremely small, may be an appropriate factor warranting departure. When the quantity of the controlled substance is [10] [20] times greater than that listed at Title 21 U.S.C. § 841(b)(1)(A), an upward departure may be warranted.

Conversely, when the quantity of controlled substance is [1/10th] [1/20th] of that listed at Title 21 U.S.C. § 841(b)(1)(B), a downward departure may be warranted.".]

[Option 2: "§ 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) add the offense levels specified in the Drug Quantity table set forth in subsection (c) below based on the greatest amount of drugs that the defendant was associated with on any one occasion.

(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 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
(A) Bodily Injury	Add 2.
(B) Serious Bodily Injury	Add 4.
(C) Permanent or Life-Threatening Bodily Injury.	Add 6.

Provided, however, 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):