

9. Cocaine Base Sentencing

Reason for Amendment: *The Commission identified as a policy priority for the amendment cycle ending May 1, 2007, "continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on cocaine sentencing policy," including reevaluating the Commission's 2002 report to Congress, Cocaine and Federal Sentencing Policy. As a result of the Anti-Drug Abuse Act of 1986, Pub. L. 99-570, 21 U.S.C. § 841(b)(1) requires a five-year mandatory minimum penalty for a first-time trafficking offense involving 5 grams or more of crack cocaine, or 500 grams of powder cocaine, and a ten-year mandatory minimum penalty for a first-time trafficking offense involving 50 grams or more of crack cocaine, or 5,000 grams or more of powder cocaine. Because 100 times more powder cocaine than crack cocaine is required to trigger the same mandatory minimum penalty, this penalty structure is commonly referred to as the "100-to-1 drug quantity ratio."*

To assist the Commission in its consideration of Federal cocaine sentencing policy, the Commission received statements and heard expert testimony from the Executive Branch, the Federal judiciary, defense practitioners, state and local law enforcement representatives, medical and treatment experts, academicians, social scientists, and interested community representatives at hearings on November 14, 2006, and March 20, 2007. The Commission also received substantial written public comment on Federal cocaine sentencing policy throughout the amendment cycle.

During the amendment cycle, the Commission updated its analysis of key sentencing data about cocaine offenses and offenders; reviewed recent scientific literature regarding cocaine use, effects, dependency, prenatal effects, and prevalence; researched trends in cocaine trafficking patterns, price, and use; surveyed the state laws regarding cocaine penalties; and monitored case law developments.

Current data and information continue to support the Commission's consistently held position that the 100-to-1 drug quantity ratio significantly undermines various congressional objectives set forth in the Sentencing Reform Act and elsewhere. These findings will be more thoroughly explained in a forthcoming report that will present to Congress, on or before May 15, 2007, a number of recommendations for modifications to the statutory penalties for crack cocaine offenses. It is the Commission's firm desire that this report will facilitate prompt congressional action addressing the 100-to-1 drug quantity ratio.

The Commission's recommendation and strong desire for prompt legislative action notwithstanding, the problems associated with the 100-to-1 drug quantity ratio are so urgent and compelling that this amendment is promulgated as an interim measure to alleviate some of those problems. The Commission has concluded that the manner in which the Drug Quantity Table in §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy)) was constructed to incorporate the statutory mandatory minimum penalties for crack cocaine offenses is an area in which the Federal sentencing guidelines contribute to the problems associated with the 100-to-1 drug quantity ratio.

When Congress passed the 1986 Act, the Commission responded by generally incorporating the statutory mandatory minimum sentences into the guidelines and extrapolating upward and downward to set guideline sentencing ranges for all drug quantities. The drug quantity thresholds in the Drug Quantity Table are set so as to provide base offense levels corresponding to guideline ranges that are above the statutory mandatory minimum penalties. Accordingly, offenses involving 5 grams or more of crack cocaine were assigned a base offense level (level 26) corresponding to a sentencing guideline range of 63 to 78 months for a defendant in Criminal History Category I (a guideline range that exceeds the five-year statutory minimum for such offenses by at least three months). Similarly, offenses involving 50 grams or more of crack cocaine were assigned a base offense level (level 32) corresponding to a sentencing guideline range of 121 to 151 months for a defendant in Criminal History Category I (a guideline range that exceeds the ten-year statutory minimum for such offenses by at least one month).

Crack cocaine offenses for quantities above and below the mandatory minimum threshold quantities were set accordingly using the 100-to-1 drug quantity ratio.

This amendment modifies the drug quantity thresholds in the Drug Quantity Table so as to assign, for crack cocaine offenses, base offense levels corresponding to guideline ranges that include the statutory mandatory minimum penalties. Accordingly, pursuant to the amendment, 5 grams of cocaine base are assigned a base offense level of 24 (51 to 63 months at Criminal History Category I, which includes the five-year (60 month) statutory minimum for such offenses), and 50 grams of cocaine base are assigned a base offense level of 30 (97 to 121 months at Criminal History Category I, which includes the ten-year (120 month) statutory minimum for such offenses). Crack cocaine offenses for quantities above and below the mandatory minimum threshold quantities similarly are adjusted downward by two levels. The amendment also includes a mechanism to determine a combined base offense level in an offense involving crack cocaine and other controlled substances.

The Commission's prison impact model predicts that, assuming no change in the existing statutory mandatory minimum penalties, this modification to the Drug Quantity Table will affect 69.7 percent of crack cocaine offenses sentenced under §2D1.1 and will result in a reduction in the estimated average sentence of all crack cocaine offenses from 121 months to 106 months, based on an analysis of cases sentenced in fiscal year 2006 under §2D1.1 involving crack cocaine.

Having concluded once again that the 100-to-1 drug quantity ratio should be modified, the Commission recognizes that establishing federal cocaine sentencing policy ultimately is Congress's prerogative. Accordingly, the Commission tailored the amendment to fit within the existing statutory penalty scheme by assigning base offense levels that provide guideline ranges that include the statutory mandatory minimum penalties for crack cocaine offenses. The Commission, however, views the amendment only as an interim solution to some of the problems associated with the 100-to-1 drug quantity ratio. It is neither a permanent nor a complete solution to those problems. Any comprehensive solution to the 100-to-1 drug quantity ratio requires appropriate legislative action by Congress.

Amendment:

§2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy

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(c) DRUG QUANTITY TABLE

Controlled Substances and Quantity*	Base Offense Level
(1) ● 30 KG or more of Heroin; ● 150 KG or more of Cocaine; ● 1.5 4.5 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"; ● 15 KG or more of Amphetamine, or 1.5 KG or more of Amphetamine (actual); ● 300 G or more of LSD; ● 12 KG or more of Fentanyl; ● 3 KG or more of a Fentanyl Analogue; ● 30,000 KG or more of Marijuana; ● 6,000 KG or more of Hashish; ● 600 KG or more of Hashish Oil; ● 30,000,000 units or more of Schedule I or II Depressants; ● 1,875,000 units or more of Flunitrazepam.	Level 38
(2) ● At least 10 KG but less than 30 KG of Heroin; ● At least 50 KG but less than 150 KG of Cocaine;	Level 36

- At least ~~500 G~~ **1.5 KG** but less than ~~1.5~~ **4.5** 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";
- At least 5 KG but less than 15 KG of Amphetamine, or at least 500 G but less than 1.5 KG of Amphetamine (actual);
- At least 100 G but less than 300 G of LSD;
- At least 4 KG but less than 12 KG of Fentanyl;
- At least 1 KG but less than 3 KG of a Fentanyl Analogue;
- At least 10,000 KG but less than 30,000 KG of Marihuana;
- At least 2,000 KG but less than 6,000 KG of Hashish;
- At least 200 KG but less than 600 KG of Hashish Oil;
- At least 10,000,000 but less than 30,000,000 units of Schedule I or II Depressants;
- At least 625,000 but less than 1,875,000 units of Flunitrazepam.

- (3) ● At least 3 KG but less than 10 KG of Heroin;
- At least 15 KG but less than 50 KG of Cocaine;
- At least ~~150~~ **500** G but less than ~~500 G~~ **1.5 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";
- At least 1.5 KG but less than 5 KG of Amphetamine, or at least 150 G but less than 500 G of Amphetamine (actual);
- At least 30 G but less than 100 G of LSD;
- At least 1.2 KG but less than 4 KG of Fentanyl;
- At least 300 G but less than 1 KG of a Fentanyl Analogue;
- At least 3,000 KG but less than 10,000 KG of Marihuana;
- At least 600 KG but less than 2,000 KG of Hashish;
- At least 60 KG but less than 200 KG of Hashish Oil;
- At least 3,000,000 but less than 10,000,000 units of Schedule I or II Depressants;
- At least 187,500 but less than 625,000 units of Flunitrazepam.

Level 34

- (4) ● At least 1 KG but less than 3 KG of Heroin;
- At least 5 KG but less than 15 KG of Cocaine;
- At least ~~50~~ **150** G but less than ~~150~~ **500** 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";
- At least 500 G but less than 1.5 KG of Amphetamine, or at least 50 G but less than 150 G of Amphetamine (actual);
- At least 10 G but less than 30 G of LSD;
- At least 400 G but less than 1.2 KG of Fentanyl;
- At least 100 G but less than 300 G of a Fentanyl Analogue;
- At least 1,000 KG but less than 3,000 KG of Marihuana;
- At least 200 KG but less than 600 KG of Hashish;
- At least 20 KG but less than 60 KG of Hashish Oil;
- At least 1,000,000 but less than 3,000,000 units of Schedule I or II Depressants;

Level 32

- At least 62,500 but less than 187,500 units of Flunitrazepam.

- (5) ● At least 700 G but less than 1 KG of Heroin;
 ● At least 3.5 KG but less than 5 KG of Cocaine;
 ● At least ~~35~~50 G but less than ~~50~~150 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";
 ● At least 350 G but less than 500 G of Amphetamine, or at least 35 G but less than 50 G of Amphetamine (actual);
 ● At least 7 G but less than 10 G of LSD;
 ● At least 280 G but less than 400 G of Fentanyl;
 ● At least 70 G but less than 100 G of a Fentanyl Analogue;
 ● At least 700 KG but less than 1,000 KG of Marihuana;
 ● At least 140 KG but less than 200 KG of Hashish;
 ● At least 14 KG but less than 20 KG of Hashish Oil;
 ● At least 700,000 but less than 1,000,000 units of Schedule I or II Depressants;
 ● At least 43,750 but less than 62,500 units of Flunitrazepam.

Level 30

- (6) ● At least 400 G but less than 700 G of Heroin;
 ● At least 2 KG but less than 3.5 KG of Cocaine;
 ● At least ~~20~~35 G but less than ~~35~~50 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";
 ● At least 200 G but less than 350 G of Amphetamine, or at least 20 G but less than 35 G of Amphetamine (actual);
 ● At least 4 G but less than 7 G of LSD;
 ● At least 160 G but less than 280 G of Fentanyl;
 ● At least 40 G but less than 70 G of a Fentanyl Analogue;
 ● At least 400 KG but less than 700 KG of Marihuana;
 ● At least 80 KG but less than 140 KG of Hashish;
 ● At least 8 KG but less than 14 KG of Hashish Oil;
 ● At least 400,000 but less than 700,000 units of Schedule I or II Depressants;
 ● At least 25,000 but less than 43,750 units of Flunitrazepam.

Level 28

- (7) ● At least 100 G but less than 400 G of Heroin;
 ● At least 500 G but less than 2 KG of Cocaine;
 ● At least ~~5~~20 G but less than ~~20~~35 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";
 ● At least 50 G but less than 200 G of Amphetamine, or at least 5 G but less than 20 G of Amphetamine (actual);
 ● At least 1 G but less than 4 G of LSD;
 ● At least 40 G but less than 160 G of Fentanyl;
 ● At least 10 G but less than 40 G of a Fentanyl Analogue;
 ● At least 100 KG but less than 400 KG of Marihuana;
 ● At least 20 KG but less than 80 KG of Hashish;
 ● At least 2 KG but less than 8 KG of Hashish Oil;

Level 26

- At least 100,000 but less than 400,000 units of Schedule I or II Depressants;
- At least 6,250 but less than 25,000 units of Flunitrazepam.

- (8) ● At least 80 G but less than 100 G of Heroin;
 ● At least 400 G but less than 500 G of Cocaine;
 ● At least ~~4~~5 G but less than ~~5~~20 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";
 ● At least 40 G but less than 50 G of Amphetamine, or at least 4 G but less than 5 G of Amphetamine (actual);
 ● At least 800 MG but less than 1 G of LSD;
 ● At least 32 G but less than 40 G of Fentanyl;
 ● At least 8 G but less than 10 G of a Fentanyl Analogue;
 ● At least 80 KG but less than 100 KG of Marihuana;
 ● At least 16 KG but less than 20 KG of Hashish;
 ● At least 1.6 KG but less than 2 KG of Hashish Oil;
 ● At least 80,000 but less than 100,000 units of Schedule I or II Depressants;
 ● At least 5,000 but less than 6,250 units of Flunitrazepam.

Level 24

- (9) ● At least 60 G but less than 80 G of Heroin;
 ● At least 300 G but less than 400 G of Cocaine;
 ● At least ~~3~~4 G but less than ~~4~~5 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";
 ● At least 30 G but less than 40 G of Amphetamine, or at least 3 G but less than 4 G of Amphetamine (actual);
 ● At least 600 MG but less than 800 MG of LSD;
 ● At least 24 G but less than 32 G of Fentanyl;
 ● At least 6 G but less than 8 G of a Fentanyl Analogue;
 ● At least 60 KG but less than 80 KG of Marihuana;
 ● At least 12 KG but less than 16 KG of Hashish;
 ● At least 1.2 KG but less than 1.6 KG of Hashish Oil;
 ● At least 60,000 but less than 80,000 units of Schedule I or II Depressants;
 ● At least 3,750 but less than 5,000 units of Flunitrazepam.

Level 22

- (10) ● At least 40 G but less than 60 G of Heroin;
 ● At least 200 G but less than 300 G of Cocaine;
 ● At least ~~2~~3 G but less than ~~3~~4 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";
 ● At least 20 G but less than 30 G of Amphetamine, or at least 2 G but less than 3 G of Amphetamine (actual);
 ● At least 400 MG but less than 600 MG of LSD;
 ● At least 16 G but less than 24 G of Fentanyl;
 ● At least 4 G but less than 6 G of a Fentanyl Analogue;
 ● At least 40 KG but less than 60 KG of Marihuana;
 ● At least 8 KG but less than 12 KG of Hashish;

Level 20

- At least 800 G but less than 1.2 KG of Hashish Oil;
- At least 40,000 but less than 60,000 units of Schedule I or II Depressants;
- 40,000 or more units of Schedule III substances;
- At least 2,500 but less than 3,750 units of Flunitrazepam.

- (11) ● At least 20 G but less than 40 G of Heroin;
- At least 100 G but less than 200 G of Cocaine;
 - At least ~~1~~2 G but less than ~~2~~3 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";
 - At least 10 G but less than 20 G of Amphetamine, or at least 1 G but less than 2 G of Amphetamine (actual);
 - At least 200 MG but less than 400 MG of LSD;
 - At least 8 G but less than 16 G of Fentanyl;
 - At least 2 G but less than 4 G of a Fentanyl Analogue;
 - At least 20 KG but less than 40 KG of Marihuana;
 - At least 5 KG but less than 8 KG of Hashish;
 - At least 500 G but less than 800 G of Hashish Oil;
 - At least 20,000 but less than 40,000 units of Schedule I or II Depressants;
 - At least 20,000 but less than 40,000 units of Schedule III substances;
 - At least 1,250 but less than 2,500 units of Flunitrazepam.

Level 18

- (12) ● At least 10 G but less than 20 G of Heroin;
- At least 50 G but less than 100 G of Cocaine;
 - At least ~~500 MG~~ 1 G but less than ~~1~~2 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";
 - At least 5 G but less than 10 G of Amphetamine, or at least 500 MG but less than 1 G of Amphetamine (actual);
 - At least 100 MG but less than 200 MG of LSD;
 - At least 4 G but less than 8 G of Fentanyl;
 - At least 1 G but less than 2 G of a Fentanyl Analogue;
 - At least 10 KG but less than 20 KG of Marihuana;
 - At least 2 KG but less than 5 KG of Hashish;
 - At least 200 G but less than 500 G of Hashish Oil;
 - At least 10,000 but less than 20,000 units of Schedule I or II Depressants;
 - At least 10,000 but less than 20,000 units of Schedule III substances;
 - At least 625 but less than 1,250 units of Flunitrazepam.

Level 16

- (13) ● At least 5 G but less than 10 G of Heroin;
- At least 25 G but less than 50 G of Cocaine;
 - At least ~~250~~500 MG but less than ~~500 MG~~ 1 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";
 - At least 2.5 G but less than 5 G of Amphetamine, or at least 250 MG but less than 500 MG of Amphetamine (actual);
 - At least 50 MG but less than 100 MG of LSD;

Level 14

- At least 2 G but less than 4 G of Fentanyl;
- At least 500 MG but less than 1 G of a Fentanyl Analogue;
- At least 5 KG but less than 10 KG of Marihuana;
- At least 1 KG but less than 2 KG of Hashish;
- At least 100 G but less than 200 G of Hashish Oil;
- At least 5,000 but less than 10,000 units of Schedule I or II Depressants;
- At least 5,000 but less than 10,000 units of Schedule III substances;
- At least 312 but less than 625 units of Flunitrazepam.

(14) ● Less than 5 G of Heroin;

Level 12

- Less than 25 G of Cocaine;
- Less than 250500 MG 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";
- Less than 2.5 G of Amphetamine, or less than 250 MG of Amphetamine (actual);
- Less than 50 MG of LSD;
- Less than 2 G of Fentanyl;
- Less than 500 MG of a Fentanyl Analogue;
- At least 2.5 KG but less than 5 KG of Marihuana;
- At least 500 G but less than 1 KG of Hashish;
- At least 50 G but less than 100 G of Hashish Oil;
- At least 2,500 but less than 5,000 units of Schedule I or II Depressants;
- At least 2,500 but less than 5,000 units of Schedule III substances;
- At least 156 but less than 312 units of Flunitrazepam;
- 40,000 or more units of Schedule IV substances (except Flunitrazepam).

(15) ● At least 1 KG but less than 2.5 KG of Marihuana;

Level 10

- At least 200 G but less than 500 G of Hashish;
- At least 20 G but less than 50 G of Hashish Oil;
- At least 1,000 but less than 2,500 units of Schedule I or II Depressants;
- At least 1,000 but less than 2,500 units of Schedule III substances;
- At least 62 but less than 156 units of Flunitrazepam;
- At least 16,000 but less than 40,000 units of Schedule IV substances (except Flunitrazepam).

(16) ● At least 250 G but less than 1 KG of Marihuana;

Level 8

- At least 50 G but less than 200 G of Hashish;
- At least 5 G but less than 20 G of Hashish Oil;
- At least 250 but less than 1,000 units of Schedule I or II Depressants;
- At least 250 but less than 1,000 units of Schedule III substances;
- Less than 62 units of Flunitrazepam;
- At least 4,000 but less than 16,000 units of Schedule IV substances (except Flunitrazepam);
- 40,000 or more units of Schedule V substances.

(17) ● Less than 250 G of Marihuana;

Level 6

- Less than 50 G of Hashish;
- Less than 5 G of Hashish Oil;
- Less than 250 units of Schedule I or II Depressants;
- Less than 250 units of Schedule III substances;
- Less than 4,000 units of Schedule IV substances (except Flunitrazepam);
- Less than 40,000 units of Schedule V substances.

Commentary

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

Application Notes:

10. Use of Drug Equivalency Tables.—

(A) Controlled Substances Not Referenced in Drug Quantity Table.—The Commission has used the sentences provided in, and equivalences derived from, the statute (21 U.S.C. § 841(b)(1)), as the primary basis for the guideline sentences. The statute, however, provides direction only for the more common controlled substances, *i.e.*, heroin, cocaine, PCP, methamphetamine, fentanyl, LSD and marihuana. In the case of a controlled substance that is not specifically referenced in the Drug Quantity Table, determine the base offense level as follows:

~~(A)~~(i) Use the Drug Equivalency Tables to convert the quantity of the controlled substance involved in the offense to its equivalent quantity of marihuana.

~~(B)~~(ii) Find the equivalent quantity of marihuana in the Drug Quantity Table.

~~(C)~~(iii) Use the offense level that corresponds to the equivalent quantity of marihuana as the base offense level for the controlled substance involved in the offense.

(*See also* Application Note 5.) For example, in the Drug Equivalency Tables set forth in this Note, 1 gm of a substance containing oxymorphone, a Schedule I opiate, converts to an equivalent quantity of 5 kg of marihuana. In a case involving 100 gm of oxymorphone, the equivalent quantity of marihuana would be 500 kg, which corresponds to a base offense level of 28 in the Drug Quantity Table.

(B) Combining Differing Controlled Substances (Except Cocaine Base).— The Drug Equivalency Tables also provide a means for combining differing controlled substances to obtain a single offense level. In each case, convert each of the drugs to its marihuana equivalent, add the quantities, and look up the total in the Drug Quantity Table to obtain the combined offense level. *To determine a single offense level in a case involving cocaine base and other controlled substances, see subdivision (D) of this note.*

For certain types of controlled substances, the marihuana equivalencies in the Drug Equivalency Tables are "capped" at specified amounts (*e.g.*, the combined equivalent weight of all Schedule V controlled substances shall not exceed 999 grams of marihuana). Where there are controlled substances from more than one schedule (*e.g.*, a quantity of a Schedule IV substance and a quantity of a Schedule V substance), determine the marihuana equivalency for each schedule separately (subject to the cap, if any, applicable to that schedule). Then add the marihuana equivalencies to determine the combined marihuana equivalency (subject to the cap, if any, applicable to the combined amounts).

Note: Because of the statutory equivalences, the ratios in the Drug Equivalency Tables

do not necessarily reflect dosages based on pharmacological equivalents.

(C) Examples for Combining Differing Controlled Substances (Except Cocaine Base).—

- a.(i) The defendant is convicted of selling 70 grams of a substance containing PCP (Level 22) and 250 milligrams of a substance containing LSD (Level 18). The PCP converts to 70 kilograms of marihuana; the LSD converts to 25 kilograms of marihuana. The total is therefore equivalent to 95 kilograms of marihuana, for which the Drug Quantity Table provides an offense level of 24.*
- b.(ii) The defendant is convicted of selling 500 grams of marihuana (Level 8) and five kilograms of diazepam (Level 8). The diazepam, a Schedule IV drug, is equivalent to 625 grams of marihuana. The total, 1.125 kilograms of marihuana, has an offense level of 10 in the Drug Quantity Table.*
- c.(iii) The defendant is convicted of selling 80 grams of cocaine (Level 16) and five kilograms of marihuana (Level 14). The cocaine is equivalent to 16 kilograms of marihuana. The total is therefore equivalent to 21 kilograms of marihuana, which has an offense level of 18 in the Drug Quantity Table.*
- d.(iv) The defendant is convicted of selling 56,000 units of a Schedule III substance, 100,000 units of a Schedule IV substance, and 200,000 units of a Schedule V substance. The marihuana equivalency for the Schedule III substance is 56 kilograms of marihuana (below the cap of 59.99 kilograms of marihuana set forth as the maximum equivalent weight for Schedule III substances). The marihuana equivalency for the Schedule IV substance is subject to a cap of 4.99 kilograms of marihuana set forth as the maximum equivalent weight for Schedule IV substances (without the cap it would have been 6.25 kilograms). The marihuana equivalency for the Schedule V substance is subject to the cap of 999 grams of marihuana set forth as the maximum equivalent weight for Schedule V substances (without the cap it would have been 1.25 kilograms). The combined equivalent weight, determined by adding together the above amounts, is subject to the cap of 59.99 kilograms of marihuana set forth as the maximum combined equivalent weight for Schedule III, IV, and V substances. Without the cap, the combined equivalent weight would have been 61.99 (56 + 4.99 + .999) kilograms.*

(D) Determining Base Offense Level in Offenses Involving Cocaine Base and Other Controlled Substances.—

- (i) In General.—If the offense involves cocaine base ("crack") and one or more other controlled substance, determine the base offense level as follows:*
- (I) Determine the combined base offense level for the other controlled substance or controlled substances as provided in subdivision (B) of this note.*
- (II) Use the combined base offense level determined under subdivision (B) of this note to obtain the appropriate marihuana equivalency for the cocaine base involved in the offense using the following table:*

Base Offense Level

Marihuana Equivalency

38	6.7 kg of marihuana
36	6.7 kg of marihuana
34	6 kg of marihuana
32	6.7 kg of marihuana
30	14 kg of marihuana
28	11.4 kg of marihuana
26	5 kg of marihuana
24	16 kg of marihuana
22	15 kg of marihuana
20	13.3 kg of marihuana
18	10 kg of marihuana
16	10 kg of marihuana
14	10 kg of marihuana
12	10 kg of marihuana.

(III) Using the marihuana equivalency obtained from the table in subdivision (II), convert the quantity of cocaine base involved in the offense to its equivalent quantity of marihuana.

(IV) Add the quantity of marihuana determined under subdivisions (I) and (III), and look up the total in the Drug Quantity Table to obtain the combined base offense level for all the controlled substances involved in the offense.

(ii) Example.—The case involves 1.5 kg of cocaine, 10 kg of marihuana, and 20 g of cocaine base. Pursuant to subdivision (B), the equivalent quantity of marihuana for the cocaine and the marihuana is 310 kg. (The cocaine converts to an equivalent of 300 kg of marihuana ($1.5 \text{ kg} \times 200 \text{ g} = 300 \text{ kg}$), which when added to the quantity of marihuana involved in the offense, results in an equivalent quantity of 310 kg of marihuana.) This corresponds to a base offense level 26. Pursuant to the table in subdivision (II), the base offense level of 26 results in a marihuana equivalency of 5 kg for the cocaine base. Using this marihuana equivalency for the cocaine base results in a marihuana equivalency of 100 kg ($20 \text{ g} \times 5 \text{ kg} = 100 \text{ kg}$). Adding the quantities of marihuana of all three drug types results in a combined quantity of 410 kg of marihuana, which corresponds to a combined base offense level of 28 in the Drug Quantity Table.

DRUG EQUIVALENCY TABLES

(E) Drug Equivalency Tables.—

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Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)*

1 gm of Cocaine =	200 gm of marihuana
1 gm of N-Ethylamphetamine =	80 gm of marihuana
1 gm of Fenethylamine =	40 gm of marihuana
1 gm of Amphetamine =	2 kg of marihuana
1 gm of Amphetamine (Actual) =	20 kg of marihuana

1 gm of Methamphetamine =	2 kg of marihuana
1 gm of Methamphetamine (Actual) =	20 kg of marihuana
1 gm of "Ice" =	20 kg of marihuana
1 gm of Khat =	.01 gm of marihuana
1 gm of 4-Methylaminorex ("Euphoria")=	100 gm of marihuana
1 gm of Methylphenidate (Ritalin)=	100 gm of marihuana
1 gm of Phenmetrazine =	80 gm of marihuana
1 gm Phenylacetone/P ₂ P (when possessed for the purpose of manufacturing methamphetamine) =	416 gm of marihuana
1 gm Phenylacetone/P ₂ P (in any other case) =	75 gm of marihuana
1 gm of Cocaine Base ("Crack") =	20 kg of marihuana
1 gm of Aminorex =	100 gm of marihuana
1 gm of Methcathinone =	380 gm of marihuana
1 gm of N-N-Dimethylamphetamine =	40 gm of marihuana

**Provided,* that the minimum offense level from the Drug Quantity Table for any of these controlled substances individually, or in combination with another controlled substance, is level 12.

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