



Prison and Sentencing Impact Assessments for Proposed 2012 Amendments to the Federal Sentencing Guidelines¹

For a complete description of all of the proposed 2012 amendments, please visit http://www.ussc.gov/Legal/Amendments/Reader-Friendly/20120430_RF_Amendments.pdf.

Prison and Sentencing Impacts:

1) BZP

Prior to this amendment, the Drug Equivalency Table did not include a marijuana equivalency for BZP, which is a Schedule I stimulant. The Commission reviewed scientific literature and received expert testimony and comment relating to BZP and concluded that BZP is a stimulant with pharmacologic properties similar to that of amphetamine, but is only one-tenth to one-twentieth as potent as amphetamine, depending on the particular user's history of drug abuse. Accordingly, in order to promote uniformity in sentencing BZP offenders and to reflect the best available scientific evidence, the amendment establishes a marijuana equivalency of 1 gram of BZP equals 100 grams of marijuana. This corresponds to one-twentieth of the marijuana equivalency for amphetamine, which is 1 gram of amphetamine equals 2 kilograms (or 2,000 grams) of marijuana.

In order to perform the prison and sentencing impact assessment, Commission staff identified BZP cases sentenced under §2D1.1 from the FY2010 datafile and reviewed the documents to determine the marijuana equivalency the court used in determining the sentence. Cases in which staff could make such a determination were then included in the analysis and re-sentenced using a marijuana equivalency of 1 gram of BZP equals 100 grams of marijuana. Then a new base offense level was determined and the case was re-sentenced using that information.

¹ These are the proposed 2012 amendments to the Federal Sentencing Guidelines. These proposed amendments were sent to Congress on April 28, 2012, and unless Congress disapproves them will take effect on November 1, 2012.

BZP at 1G = 100G Marijuana

Sentencing impact:

Affected Cases*					All Cases*			
Number Affected	Percent Affected	Current Average Sentence	New Average Sentence	Percent Change	Total Number	Current Average Sentence	New Average Sentence	Percent Change
7	30.4%	77	62	-19.5%	23	73	68	-6.8%

Prison impact:

Estimated Cumulative Beds Saved

1 Year after effective date	2 Years after effective date	3 Years after effective date	4 Years after effective date	5 Years after effective date	6 Years after effective date	7 Years after effective date	10 Years after effective date
0	2	3	4	5	5	6	8

***Affected Cases** are those in which the sentence changes as a result of the sentencing factor being analyzed. **All Cases** are those with a particular sentencing factor being analyzed. Not all cases with the sentencing factor will change and so the “**All Cases**” category includes cases that are affected and not affected by the sentencing factor being analyzed.

Source: U.S. Sentencing Commission Prison and Sentencing Impact Assessment Model, FY2010 datafile.

2) §2D1.11 Safety Valve

This amendment adds a new specific offense characteristic at subsection (b)(6) of §2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy) that provides a 2-level decrease if the defendant meets the criteria set forth in subdivisions (1)-(5) of subsection (a) of §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases) (commonly referred to as the "safety valve" criteria). The new specific offense characteristic in §2D1.11 parallels the existing 2-level decrease at subsection (b)(16) of §2D1.1(Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy).

In order to perform the prison and sentencing impact assessment, cases sentenced under §2D1.11 from the FY2010 datafile were identified. The Commission can only approximate the criteria for safety valve eligibility under §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), so in order to be considered eligible, cases also needed to have all of the following criteria which was used as a proxy for safety valve eligibility:

- 1) No counts of conviction under 21 U.S.C. § 848 (Continuing Criminal Enterprise)
- 2) Criminal History Category I
- 3) No weapon SOC and no counts of conviction under 18 U.S.C. § 924(c) (Use of a Weapon During a Crime of Violence or Drug Trafficking Crime)
- 4) No levels applied under §3B1.1 *Aggravating Role*
- 5) No levels applied under §3C1.1 *Obstructing or Impeding the Administration of Justice*
- 6) Received one to three levels reduction under §3E1.1 *Acceptance of Responsibility*

Cases for which staff concluded the above criteria were met were then included in the analysis and re-sentenced with the benefit of a 2-level reduction. Cases that had already received a below range sentence and cited the safety valve as one of the reasons for the below the guideline range sentence were not changed.

2D1.11 Safety Valve

Sentencing impact:

Affected Cases*					All Cases*			
Number Affected	Percent Affected	Current Average Sentence	New Average Sentence	Percent Change	Total Number	Current Average Sentence	New Average Sentence	Percent Change
40	16.2%	48	39	-18.8%	247	57	56	-1.8%

Prison impact:

Estimated Cumulative Beds Saved

1 Year after effective date	2 Years after effective date	3 Years after effective date	4 Years after effective date	5 Years after effective date	6 Years after effective date	7 Years after effective date	10 Years after effective date
0	3	13	15	18	21	23	25

***Affected Cases** are those in which the sentence changes as a result of the sentencing factor being analyzed. **All Cases** are those with a particular sentencing factor being analyzed. Not all

cases with the sentencing factor will change and so the “**All Cases**” category includes cases that are affected and not affected by the sentencing factor being analyzed.

Source: U.S. Sentencing Commission Prison and Sentencing Impact Assessment Model, FY2010 datafile.

- 3) Prison and Sentencing Impact assessments were not performed for the following amendments: Dodd/Frank/Fraud, “Sentence Imposed” in §2L1.2, Human Rights, Driving While Intoxicated, Multiple Counts (§5G1.2), Rehabilitation, and Miscellaneous. For more information about why the Commission may not perform prison and sentencing impacts, see the [Frequently Asked Questions](#).