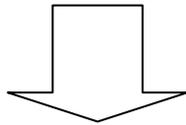


# Understanding a Basic Federal Drug Case Sentencing

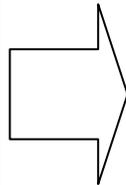
**STEP 1: What crime has the person been convicted of?** This will be a statute number listed on the indictment or the presentence investigation report (PSR).

Example: The defendant is convicted under 21 U.S.C. § 841(b)(1)(B), conspiracy to possess with intent to distribute at least 500 grams of cocaine.



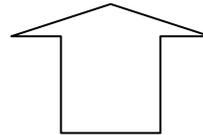
**STEP 2: Which guideline applies?** Use Appendix A of the guidelines manual and look for the statute the defendant was convicted under. It will refer you to a section of the guidelines. For most (but not all) drug offenses, the offense guideline that applies will be U.S.S.G. § 2D1.1.

Example: Appendix A says that for someone convicted under 21 U.S.C. § 841(b)(1)(B), the court should use guideline § 2D1.1.



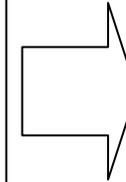
**STEP 4: Apply any special offense characteristics** that accompany the guideline that governs the offense.

Example: The defendant possessed a gun during this drug offense. Under U.S.S.G. § 2D1.1(b)(1), add 2 levels to his base offense level of 26, for a new offense level of 28.



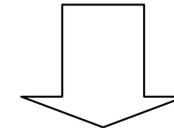
**STEP 3: Using the chart in § 2D1.1 of the guidelines manual, determine how much drugs the defendant will be sentenced for.** Remember that the “relevant conduct” rules from U.S.S.G. § 1B1.3 apply and may increase the drug amount beyond the amount listed in the indictment. For example, under certain circumstances, the defendant may be held accountable for drugs sold, manufactured, or imported by other people involved in the conspiracy.

Example: Defendant is convicted of having at least 500 grams of cocaine. Because of relevant conduct rules, he is also held accountable for 50 extra grams of cocaine, bringing the total to 550 grams. Under U.S.S.G. § 2D1.1, this drug amount makes the base offense level 26. This is the starting point for calculating the rest of the sentence under the guidelines.



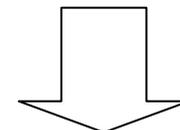
**STEP 5: Apply guideline level adjustments from Chapter 3** of the guidelines manual.

Example: The defendant played a minor role in this offense. Under U.S.S.G. § 3B1.2(b), subtract 2 offense levels from the offense level of 28 (see Step 4). This provides a new offense level of 26. The defendant also accepted responsibility and agreed to plead guilty to his current offense. Under U.S.S.G. § 3E1.1(b), subtract 3 levels from the offense level of 26. This provides a total offense level of 23.



**STEP 6: Determine the defendant’s criminal history category** using Chapter 4 of the guidelines manual.

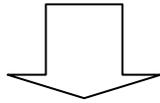
Example: Defendant has 1 prior felony drug conviction from five years ago. He served 14 months in prison for this offense. Under U.S.S.G. § 4A1.1(a), the defendant gets 3 points for his prior offense. He has no other criminal history, and he was not on parole or probation at the time he committed his current crime. Thus, his criminal history category is II (because he has 3 criminal history points).



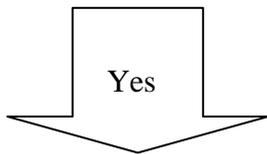
# Understanding a Basic Federal Drug Case Sentencing

**STEP 7:** Using the Sentencing Table at the back of the guidelines manual, **determine the defendant's guideline sentence based on his criminal history category and his total offense level.**

Example: From Step 5, we know the defendant's total offense level is 23. From Step 6, we know the defendant's criminal history category is II. Lining those two columns up on the Sentencing Table, the defendant's guideline sentence range is 51-63 months.

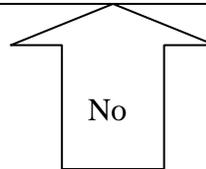


**STEP 8: Is there a mandatory minimum?** Look at the statute(s) the defendant was convicted under to find any applicable mandatory minimum.

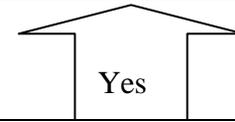


Example: Defendant was convicted under 21 U.S.C. § 841(b)(1)(B), which requires a mandatory minimum of 5 years (or 60 months). This number falls within the guideline range of 51-63 months, but is 9 months longer than the bottom of the range (51 months). Unless an exception applies (see Steps 9 and 10), the defendant is looking at a sentence of at least 60 months, because of the mandatory minimum.

Example: Our defendant pleads guilty but does not have the names of any other offenders to give to the prosecutor. Because the defendant could not help the prosecution investigate or charge anyone else, the defendant does not qualify for substantial assistance. If he also does not qualify for the safety valve, he will receive the mandatory minimum of 60 months. Go to **STEP 11**, on page 3.

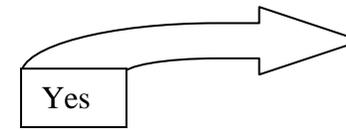
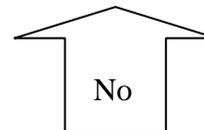
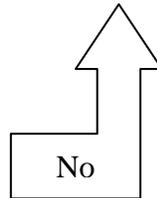


Example: If our defendant pleads guilty and gives the prosecutor names and other information that helps with investigating or charging others, he may receive a sentence below the mandatory minimum of 60 months. First, the prosecutor must decide that the defendant's help was indeed "substantial." Then, the prosecutor must ask the judge to sentence the defendant below the mandatory minimum, using U.S.S.G. § 5K1.1. Go to **STEP 11**, on page 3.



Go to **STEP 11**, on page 3

**STEP 10: Can the defendant qualify for a sentence below the mandatory minimum because he provided "substantial assistance" to the prosecution?** Under U.S.S.G. § 5K1.1, the judge can sentence a defendant below the mandatory minimum if the defendant gave the prosecution substantial assistance in investigating or prosecuting others who committed crimes.



Go to **STEP 11**, on page 3.

**STEP 9: Does the defendant qualify for the "safety valve"?** If so, the defendant can be sentenced below the mandatory minimum and according to the guidelines. The safety valve is a 5-part test found in § 5C1.2 of the guidelines manual. To qualify for the safety valve, the defendant must meet all of the following:

1. He has no more than 1 criminal history point under the guidelines;
2. He did not use violence, threats of violence, or possess a gun or other dangerous weapon;
3. The offense did not result in death or serious bodily injury to any person;
4. He was not a leader, organizer, manager, or supervisor of others in the offense; and
5. He has truthfully provided the government with all the information he has concerning the offense.

Example: Our defendant does not qualify for the safety valve on two grounds – he has more than 1 criminal history point (see Step 6), and he had a gun (see Step 4). Thus, he cannot receive the benefit of the safety valve or be sentenced below the mandatory minimum.



# Understanding a Basic Federal Drug Case Sentencing

## STEP 11: Determine the guideline range and apply 18 U.S.C. § 3553(a).

The guidelines are advisory, not mandatory. This means that the judge must *consider* the guidelines, but is not required to sentence the defendant within the guideline range *if that sentence would be unjustified*. To determine this, the judge is required to consider the sentencing factors listed in 18 U.S.C. § 3553(a) and decide whether a sentence within the guideline range is “sufficient, but not greater than necessary” to comply with the four purposes of punishment: providing just punishment, deterrence, protecting public safety, and rehabilitating the offender.

**Is a sentence within the guideline range “sufficient, but not greater than necessary” to comply with the purposes of sentencing in 18 U.S.C. § 3553(a)?**

Yes

**STEP 12: Sentencing.** The judge will issue a sentence that is **within or above the guideline range**. This sentence will be upheld on appeal unless it is unreasonable. **However, this sentence cannot be lower than the mandatory minimum, unless the person qualified for the safety valve or substantial assistance.**

No

**STEP 12: Sentencing.** If the judge concludes that a sentence in the guideline range is too high, he will decide, based on all the facts and circumstances, what sentence **below the guideline range** is appropriate for this defendant. This sentence will be upheld on appeal unless it is unreasonable. **However, this sentence cannot be lower than the mandatory minimum, unless the person qualified for the safety valve or substantial assistance.**

## FEDERAL SENTENCING RULES TO REMEMBER:

**Rule 1: There are only two exceptions to mandatory minimum sentences: the safety valve and substantial assistance.**

**Rule 2: The mandatory minimum trumps any shorter guideline sentence, unless the safety valve or substantial assistance applies.** Example: Joe is convicted under a law that requires a 5-year (60-month) mandatory *minimum*. The sentencing guidelines call for a sentencing range of 37-46 months for Joe. Unless Joe qualifies for the safety valve or substantial assistance, the judge **MUST** give Joe a prison sentence of 5 years (60 months). The longer mandatory minimum (60 months) trumps the shorter guideline sentence (37-46 months).

**Rule 3: Unless the safety valve or substantial assistance applies, the mandatory minimum is the bottom, not the top, which the judge must consider.** Example: Sally commits a crime that has a 10-year (120-month) mandatory *minimum* and a 20-year (240 months) statutory *maximum*. Under the sentencing guidelines, she is subject to an advisory range of 151-188 months in prison. The judge must give Sally *at least* the 10-year mandatory minimum sentence, unless she qualifies for the safety valve or substantial assistance. However, the guidelines allow (but do not require) the judge to go *above* the mandatory minimum and give Sally any of the following:

- a sentence between 10 years (120 months – the mandatory minimum) and 151 months
- a sentence within the guideline range of 151-188 months, or
- a sentence above 188 months – as long as this sentence does not go above the statutory maximum of 240 months (unless the facts supporting a sentence longer than that were included in the indictment and proven to a jury).