2014 Drug Sentencing Changes and Rationale

UNITED STATES SENTENCING GUIDELINES
Background: USDOJ’s 2013 “Smart on Crime” Initiative

- “It is time for meaningful sentencing reform.”
- DOJ changed charging policies to avoid “draconian” mandatory-minimum sentences for:
  - Low-level, nonviolent drug offenders
  - With no ties to large-scale organizations, gangs, or cartels
- New guidance to prosecutors regarding recidivist enhancements:
  - Consider several factors, including use of violence and ties to large-scale criminal organizations, to determine appropriateness
  - When possible, seek to charge defendant with a drug quantity lower than the triggering amount
Reduced Severity Levels for Drug Trafficking

- In April 2014, the United States Sentencing Commission reduced drug trafficking severity levels by two levels.
  - Previously, US Sentencing Guidelines exceeded mandatory minimum penalties (to leave incentive for cooperation & plea-bargaining).
  - After change, range contains mandatory minimum penalty.
  - Sentencing aggravation still possible (firearm possession, violence use, aggravating role, or repeat/career offenders). Quantity is not the only proxy for seriousness.

- Chief Judge Saris, USSC Chair: Amendment is “modest, well thought out step to appropriately reduce prison costs and overcapacity. It … will not undermine public safety.”

- Changes effective Nov. 1, 2014, unless disapproved by Congress.
In July 2014, the United States Sentencing Commission made the April 2014 guidelines reductions retroactive.

USSC estimates 46,000 offenders may benefit from retroactive application, and the average sentence reduction would be approximately 18 percent (25 months).

Like the initial change, this was intended to address federal prison cost and overcapacity issues.

Will not affect prison sentences until November 1, 2015.
Key Rationale: Study of Offender Recidivism After 2007 Amendment

- In 2007, the U.S. Sentencing Guidelines Commission—
  - Reduced the severity of crack cocaine by two levels.
  - Retroactively applied reductions.
- For those whose sentences were retroactively reduced, average drop was 22 months (20 percent).
- Study compared offenders given retroactive reductions to those eligible but denied.
- Findings: No significant differences in recidivism rates or timing of recidivism.
Comparison to Minnesota Sentencing Guidelines

COMMON SEVERITY 6, 8, AND 9 DRUG SALE OFFENSES COMPARED TO FEDERAL COUNTERPARTS UNDER AMENDED U.S. GUIDELINES
Minnesota vs. U.S. Sentencing Guidelines (Drug Offenses)

**Minnesota**
- Two grid rows applicable to drug offenses are a presumptive commit to prison for first-time offenders (severity levels 8 & 9).
- Those distinguish cocaine, heroin, methamphetamine, opiates, PCP, hallucinogen, & marijuana.
- Purity is not a factor.
- Courts may not depart from Guidelines without findings.

**United States**
- Thirteen grid rows applicable to drug trafficking offenses carry presumptive imprisonment for more than 12 months for first-time offenders (even-numbered offense levels 14-38).
- Distinguishes over a dozen drugs.
- Drug equivalency tables for many more.
- Various cutoffs; purity is a factor.
- Guidelines are essentially advisory.
Comparison Method

1. **First-time offenders only.** To simplify comparison, assumed criminal history score of zero, no aggravating or mitigating factors.

2. **Matching the grid rows.** Found comparable sentences on the respective grids for offenders with no criminal history.

3. **Three rows only.** Focused comparison on Minnesota’s 3rd, 2nd, and 1st Degree Controlled Substance Crimes. Those offenses show—
   - The most severe drug offense for which a stayed prison term is presumed with no criminal history score (level 6), and
   - Those offenses for which a prison commitment is presumed with no criminal history score (level 8 & 9).

4. **Finding the drug amounts.** Compared quantities of selected drugs required to qualify for drug trafficking/sale offenses delineated at the respective severity level.
Challenges With this Comparison Method

- These offenses are not commonly federally prosecuted at levels as low as are represented in these comparisons.
- First-time federal offenders who plead guilty may qualify for a reduction of up to five levels (floor: level 17).
- Federal offenders with two predicate offenses (trafficking or crimes of violence) may qualify for “career offender” status, close to mandatory maximums.
3rd Degree Sale & U.S. Trafficking

Minnesota Severity Level 6: Presumptive stay

- Cocaine: 0-3 g
- Heroin: 0-3 g
- Meth: 0-3 g
- LSD or MDMA: 10-50 doses
- Hydrocodone or oxycodone: 0-10 g (fewer than 33 Vicodin pills)
- Marijuana: 5-25 kg

U.S. Offense Level 12: Less than 1 year permissible

- Cocaine: 0-50 g
  - Crack 0-2.8 g
- Heroin: 0-10 g
- Meth: 0-5 g
  - Or 0 - 0.5 g ("actual" or "Ice")
- LSD: 0 - 0.1 g
- MDMA: 10-20 g
- Hydrocodone: 5,000-10,000 units
- Oxycodone: 0.75-1.5 g "actual" (pure)
- Marijuana: 5-10 kg
2nd Degree Sale & U.S. Trafficking

Minnesota Severity Level 8: 41-57 month range

- Cocaine: 3-10 g
- Heroin: 3-10 g
- Meth: 3-10 g
- Amphetamine, LSD, or MDMA: 10-50 g or 50-200 doses
- Hydrocodone or oxycodone: 10-50 g (not more than 33-164 Vicodin pills)
- Marijuana: 25-50 kg

U.S. Offense Level 22: 41-51 month range

- Cocaine: 400-500 g
  - Crack 22.4-28 g
- Heroin: 80-100 g
- Amphetamine or meth: 40-50 g
  - Or 4-5 g (“actual” or “Ice”)
- LSD: 0.8-1 g
- MDMA: 160-200 g
- Hydrocodone: 80,000-100,000 units
- Oxycodone: 12-15 g “actual”
- Marijuana: 80-100 kg
1st Degree Sale & U.S. Trafficking

Minnesota Severity Level 9: 74-103 month range
- Cocaine: 10+ g
- Heroin: 10+ g
- Meth: 10+ g
- Amphetamine, LSD, or MDMA: 50+ g or 200+ doses
- Hydrocodone or oxycodone: 50+ g (threshold begins below 164 Vicodin pills)
- Marijuana: 50+ kg

U.S. Offense Level 28: 78-97 mo. range
- Cocaine: 3,500-5,000 g
  - Crack: 196-280 g
- Heroin: 700-1,000 g
- Amphetamine/meth: 350-500 g
  - Or 35-50 g (“actual” or “Ice”)
- LSD: 7-10 g
- MDMA: 1,400-2,000 g
- Hydrocodone: 700,000-1 million units
- Oxycodone: 105-149 g “actual”
- Marijuana: 700-1,000 kg
For offenders with no criminal history and no aggravating or mitigating factors:

- Minnesota's weight cutoffs for cocaine, heroin, amphetamine, methamphetamine, hydrocodone, and marijuana sale are lighter than the new federal cutoffs.
- Minnesota's weight cutoffs for LSD sale are generally heavier than the new federal cutoffs.
- Minnesota's top tier for drug sale encompasses a broader weight range than the federal guidelines.
- USSC likely has greater flexibility to make direct changes to the weight ranges than the MSGC.