

**OUTLINE OF TEMPORARY AMENDMENTS TAKING EFFECT
DECEMBER 16, 2000 AND MAY 1, 2001**

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The Sentencing Commission has promulgated five temporary amendments since November 1, 2000. They are designated as amendments 608 through 612 and were promulgated under temporary-amendment authority given to the Commission by Congress.¹ Amendment 608 took effect on December 16, 2000, and amendments 609 through 612 took effect on May 1, 2001.² The temporary amendments will continue in effect until November 1, 2001.³ For a change made by any of these temporary amendments to continue in effect beyond that date, the Commission must repromulgate the change in a regular amendment – that is, in an amendment promulgated under 28 U.S.C. § 994(p).

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

Endangerment. Amendment 608 adds an enhancement applicable if the offense involves the manufacture of methamphetamine or amphetamine. New subsection (b)(6)(A) calls for a three-level enhancement, with a floor of 27, if the offense created a substantial risk of harm to human life (other than to a minor or an incompetent) or to the

¹The authority for these temporary amendments is found in Children’s Health Act of 2000, Pub. L. No. 106-310, § 3612, 114 Stat. 1228-29 (amendment 608); *id.* at § 3664, 114 Stat. 1244 (amendment 609); *id.* at § 3611, 114 Stat. 1228 (amendment 610); *id.* at § 3651, 114 Stat. 1238-39 (amendment 611); Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 112(b), 114 Stat. 1489-90 (amendment 612).

²U.S. Sentencing Comm’n, Supplement to the 2000 Guidelines Manual (May 1, 2001).

³The provisions set forth in footnote 1 all incorporate by reference section 21(a) of the Sentencing Act of 1987, Pub. L. No. 100-182, 101 Stat. 1266, a provision that no longer is in force unless specifically revived. Under section 21(a), the Commission can promulgate a temporary amendment that will “remain in effect until and during the pendency of the next report to Congress under section 994(p) of title 28, United States Code.” The Commission will submit the next report to Congress under 28 U.S.C. § 994(p) on or before May 1, 2001. The Commission’s practice has been to designate the November 1 following the date of submission as the effective date of the amendments submitted.

environment. New subsection (b)(6)(B) calls for a six-level enhancement, with a floor of 30, if the offense created a substantial risk of harm to the life of a minor or an incompetent.⁴ New application note 21(A) sets forth four factors that the sentencing court can consider in determining if the offense created a substantial risk of harm to human life or the environment, such as the quantity of chemicals or hazardous or toxic substances found where the methamphetamine or amphetamine was manufactured.

Ecstasy. Amendment 609 revises the drug equivalency tables of application note 10 to provide a greater marijuana equivalency for MDMA (3,4-methylenedioxy methamphetamine), MDA (3,4-methylenedioxy amphetamine), and MDEA (3,4-methylenedioxy-N-ethylamphetamine). The new equivalency for all four is 500 grams of marijuana per gram of MDMA, MDA, and MDEA. The previous equivalencies were 50 grams for MDA, 35 grams for MDMA, and 30 grams for MDEA. Amendment 609 also adds PMA (paramethoxymethamphetamine) to the tables, with an equivalency of 500 grams of marijuana per gram of PMA. The Commission set the 500 gram equivalency

to target serious high-level traffickers and to provide appropriate punishment, deterrence, and incentives for cooperation.. The penalty levels chosen for Ecstasy offenses provide five year sentences for serious traffickers (those whose relevant conduct involved at least 800 pills) and ten year sentences for high-level traffickers (those whose relevant conduct involved at least 8,000 pills).⁵

Amphetamine. Amendment 610 revises the drug quantity table to treat amphetamine the same as methamphetamine (the offense level assigned a given quantity of amphetamine is the same as the offense level assigned to that quantity of methamphetamine).

List I chemicals. Amendment 611 amends the drug equivalency tables of application note 10 to add a marijuana equivalency for list I chemicals used in the manufacture of methamphetamine and methamphetamine. The equivalency is 10 kilograms of marijuana per gram of ephedrine, phenylpropanolamine, or pseudoephedrine.⁶ The Commission, in assigning an equivalency of 10 kilograms,

⁴New application note 21(B) defines a “minor” to be an individual less than 18 years old and an “incompetent” to be an individual “incapable of taking care of the individual’s self or property because of a mental or physical illness or disability, mental retardation, or senility.”

⁵U.S.S.C. App. C, amend. 609 (reason for amendment).

⁶If the case involves ephedrine, phenylpropanolamine, or pseudoephedrine tablets, a footnote to the table directs the sentencing court to use the weight of the chemical in the tablets,

assumed a 50 percent yield of pure methamphetamine from those chemicals.⁷ The Commission’s goal is that an offense involving the use of these chemicals to manufacture methamphetamine should have an offense level under this guideline that is the same as the offense level under § 2D1.11 for offense involving these chemicals.⁸

§ 2D1.10. Endangering Human Life While Illegally Manufacturing a Controlled Substance; Attempt or Conspiracy

Amendment 608 adds an enhancement similar to the endangerment enhancement that amendment 608 adds to § 2D1.1. New subsection (b)(1)(A) calls for a three-level enhancement, with a floor of 27, if the offense involved manufacture of methamphetamine or amphetamine.⁹ New subsection (b)(2) calls for a six-level enhancement, with a floor of 30, if the offense involved the manufacture of methamphetamine or amphetamine and created a substantial risk of harm to the life of a minor or an incompetent.¹⁰ New application note 1(A) sets forth four factors that the court may consider in determining if the offense created a substantial risk of harm to human life or the environment, such as the quantity of chemicals or hazardous or toxic substances found where the methamphetamine or amphetamine was manufactured.

§ 2D1.11. Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy

Amendment 611 revises subsection (d), which contains the chemical quantity table

not the total weight of the tablets.

⁷U.S.S.C. App. C, amend. 611 (reason for amendment) (equivalency “is based on data from the DEA that the actual yield from ephedrine, pseudoephedrine, or PPA [phenylpropanolamine] typically is in the range of 50 to 75 percent.”).

⁸*See id.*

⁹New subsection (b)(1)(A) does not require that the offense create a substantial risk of harm to human life, other than to the life of a minor or an incompetent or to the environment, and therefore is not identical to new subsection (b)(6)(A) of § 2D1.1. The Commission omitted the requirement that the offense have created a substantial risk because the offense to which § 2D1.10 applies, violation of 21 U.S.C. § 858, has as an element the creation of a substantial risk to human life. U.S.S.C. App. C, amend. 608 (reason for amendment).

¹⁰New application note 1(B) defines a “minor” to be an individual less than 18 years old and an “incompetent” to be an individual “incapable of taking care of the individual’s self or property because of a mental or physical illness or disability, mental retardation, or senility.”

used to determine the base offense level under this guideline. New subsection (d)(1) sets forth a quantity table for ephedrine, pseudoephedrine, and phenylpropanolamine.¹¹ The levels in that table are assigned on the basis of pure methamphetamine that can be produced, assuming a 50 percent yield. The maximum base offense level is 38 in response to the congressional directive to increase penalties for those chemicals to correspond to the penalties for the quantity of methamphetamine that could reasonably have been manufactured. New § 2D1.11(d)(2) contains what is the current chemical-quantity table. Amendment 611, however, revises that table to increase the penalties for five List I chemicals associated with the manufacture of methamphetamine and amphetamine. The chemicals are benzaldehyde, hydriodic acid, methylamine, nitroethane, and norpseudoephedrine.

Finally, amendment 611 also changes the method of determining the base offense level when more than one chemical is involved. New commentary provides that if the chemicals involved consist of some combination of ephedrine, pseudoephedrine, or phenylpropanolamine, the quantities are aggregated and the aggregated quantity is used to determine the base offense level. In any other situation, the base offense level is determined by using the single chemical that results in the greatest offense level.

§ 2G1.1. Promoting Prostitution or Prohibited Sexual Conduct

Amendment 612 adds a new application note stating that an upward departure may be warranted if (1) the defendant was convicted under 18 U.S.C. § 1591 (sex trafficking of children by force, fraud, or coercion) and the offense involved a victim who had not attained the age of 14, or (2) the offense involved more than 10 victims.

§ 2G2.1. Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production

¹¹Congress directed the Commission to increase the penalties for ephedrine, pseudoephedrine, or phenylpropanolamine “such that those penalties corresponded [sic] to the quantity of controlled substance that could reasonably have been manufactured using the quantity of ephedrine, pseudoephedrine, or phenylpropanolamine possessed or distributed.” Children’s health Act of 2000, Pub. L. No. 106-310, § 3651(b)(1), 114 Stat. 1238-39. Congress also directed that “the quantity of controlled substance that could reasonably have been manufactured shall be determined by using a table of manufacturing conversion ratios for ephedrine, pseudoephedrine, and phenylpropanolamine, which table shall be established by the Sentencing Commission based on scientific, law enforcement, and other data the Sentencing Commission considers appropriate. *Id.* at § 3651(b)(2), 114 Stat. 1239.

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§ 2H4.1. Peonage, Involuntary Servitude, and Slave Trade

Amendment 612 revises subsection (a) to provide alternative base offense levels – 18, if the defendant was convicted under 18 U.S.C. § 1592 (unlawful conduct with respect to documents in furtherance of peonage, involuntary servitude, or forced labor), and 22 otherwise. Amendment 612 also amends subsection (b)(2), which called for a two-level enhancement if a dangerous weapon was used. New subsection (b)(2) calls for a four-level enhancement if a dangerous weapon was used, and a two-level enhancement if a dangerous weapon was brandished or the use of a dangerous weapon was threatened.¹²

§ 2H4.2. Willful violations of the Migrant and Seasonal Agricultural Worker Protection Act

Amendment 612 adds a new guideline to chapter four, part H of the *Guidelines Manual*. The new guideline has a base offense level of six, with two specific offense characteristics. Subsection (b)(1) calls for a four-level enhancement if the offense involved serious bodily injury and a two-level enhancement if the offense involved bodily injury. Subsection (b)(2) calls for a two-level enhancement if the defendant committed any part of the offense after “sustaining a civil or administrative adjudication for similar misconduct.” The guideline applies to an offense under 29 U.S.C. § 1851, which sets forth penalties for knowing and willful violations of 29 U.S.C. ch. 20 (migrant and seasonal agricultural worker protection) and of regulations issued under 29 U.S.C. ch. 20.

¹²New commentary indicates that threatened use can occur even if the dangerous weapon was not present at the time of the threatened use.