

UNITED STATES DISTRICT COURT  
OFFICE OF THE PROBATION OFFICER  
WESTERN DISTRICT OF VIRGINIA

G. WRAY WARE  
CHIEF PROBATION OFFICER

REPLY TO DIVISION OFFICE:

RICHARD H. POFF FEDERAL BUILDING  
P. O. BOX 1563  
ROANOKE 24007

VIA FAX AND U.S. MAIL

November 26, 1991

United States Sentencing Commission  
1331 Pennsylvania Avenue, N.W., Suite 1400  
Washington, DC 20004

ATTENTION: Public Information Office

RE: Comment on § 2D1.1, Application  
Note 10

Dear Sirs:

Following a review of the November 1, 1991 amendments promulgated by the United States Sentencing Commission, I noticed an inconsistency in § 2D1.1, specifically Application Note 10. The recent amendment requires conversion of drugs to marihuana equivalents as a means for combining differing controlled substances to obtain a single offense level. However, conversion of small quantities of certain common drugs to marihuana equivalents often does not reach the floor of Level 12 [§ 2D1.1(c)(16)], established for minimal amounts of substances including heroin, cocaine, cocaine base, PCP, methamphetamine, LSD, or fentanyl.

For example, an offender is convicted of selling one gram of cocaine and three ounces of marijuana. Application Note 6 states that where there are multiple drug types, the quantities of drugs are to be added using the tables for conversions. Accordingly, Application Note 10 refers to The Drug Equivalency Tables for combining different controlled substances and directs that the marihuana equivalents of the drugs be added to obtain the combined offense level for the total listed in the Drug Quantity Table. In this case, the cocaine converts to 200 grams of marihuana, and the three ounce marihuana weight is .085 kilogram for a total drug weight of .285 kilogram. The Drug Quantity Table lists at least 250 grams but less than one kilogram of marihuana as a Level 8 offense [§ 2D1.1(c)(18)] instead of the floor of Level 12 for the cocaine. Prior conversions to heroin equivalents when combining drugs allowed for the floor level for minimal amounts of certain substances, but the new amendment does not. Pursuant to the new amendment, it would require more than 12 grams of cocaine converted to marihuana to reach the quantity of marihuana listed at Level 12 (2.5 to 5 kilograms).

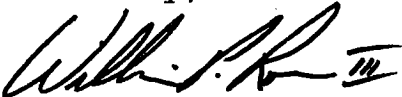
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I suspect the new amendment intended to maintain the floor level of 12 for small quantities of the common substances because when the example was processed through the updated ASSYST program, the offense level was listed as Level 12, but no explanation was provided for this application.

This is the first instance where I have detected contradictory instructions in the commentary sections of the guidelines and believe the issue needs to be addressed to avoid confusion and disparity. I think Application Note 10 should explicitly note the floor of Level 12 for minimal amounts of heroin, cocaine, cocaine base, PCP, methamphetamine, LSD, or fentanyl, although the substances are converted to marijuana equivalents in combining different types of drugs.

Thank you for your consideration of this suggestion. Should you have any questions or find that I have failed to properly interpret the new amendment, please contact me at your convenience.

Sincerely,



William P. Ross III, Supervising  
U.S. Probation Officer

WPR/ajw

cc: CUSPO Ware  
Divisional offices, WD/VA