

**PROMULGATION AND AMENDMENT OF USSG § 2D1.1  
METHAMPHETAMINE OFFENSES  
1988-2012**

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
11/01/87				<p><b>Promulgated initial version of USSG § 2D1.1</b></p> <ul style="list-style-type: none"> <li>• Did not include methamphetamine offenses in the original Drug Quantity Table because they were not subject to statutory mandatory minimums in the Anti-Drug Abuse Act of 1986.</li> <li>• Instead, the Commission deemed 1 gram of methamphetamine to be equivalent to 2 grams of cocaine.</li> <li>• It is unknown how the Commission came up with this equivalency.</li> </ul> <p>USSG § 2D1.1 (1987).</p>
11/18/88	<p>100-690</p> <p>Anti-Drug Abuse Act of 1988, sec. 6470(g).</p>	<p>Established new mandatory minimums under 21 U.S.C. § 841(b) for methamphetamine offenses, with the following quantity triggers:</p> <p><b>5-year MM:</b></p>		<p><b>Amend. No. 125 (Nov. 1, 1989)</b></p> <p><b>BOLs for methamphetamine mixture and pure methamphetamine</b></p> <ul style="list-style-type: none"> <li>• As it had done with other drug offenses subject to mandatory minimums, the Commission incorporated these statutory penalties into § 2D1.1 by corresponding the guideline ranges at levels 26 and 32 to the quantities triggering the mandatory</li> </ul>

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
		100 grams mixture or 10 grams pure meth  <b>10-year MM:</b>  1kilogram mixture <sup>1</sup> or 100 grams pure meth		minimums.  <ul style="list-style-type: none"> <li>In its Reason for Amendment, the Commission said that it “reflect[s] the statutory change with respect to methamphetamine.”</li> </ul>
11/01/90				<b>Amend. No. 318 (Nov. 1, 1990)</b>  <b>Equivalency and weight per unit</b>  <ul style="list-style-type: none"> <li>Added to its Drug Equivalency Table the entry: 1 gm Methamphetamine (Pure) = 50 gm of cocaine/10 gm of heroin.</li> <li>Explained that it “reflect[s] the distinction between methamphetamine and pure methamphetamine in the Drug Quantity Table.”</li> <li>Also clarified that its table setting forth the typical weight per unit of methamphetamine (5 mg) is the weight of the actual substance, not the weight of the mixture, and therefore the “use of this table [] will</li> </ul>

<sup>1</sup> Due to a typographical error, the Act mistakenly stated that 100 grams of methamphetamine mixture triggered the ten year mandatory minimum. This was corrected in 1990. *See* Pub. L. No. 101-647, § 1202 (1990).

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
				provide a very conservative estimate.”
11/29/90	101-647  Crime Control Act of 1990, sec. 2701.		[A]mend the existing guidelines for offenses involving smokable crystal methamphetamine under section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)) so that convictions for offenses involving smokable crystal methamphetamine will be assigned an offense level under the guidelines which is two levels above that which would have been assigned to the same offense involving other forms of methamphetamine.	<p><b>Amend. No. 370 (Nov. 1, 1991)</b></p> <p><b>BOLs for “Ice”</b></p> <ul style="list-style-type: none"> <li>• Amended § 2D1.1 so that smokable crystal methamphetamine, or “Ice,” is assigned the same offense levels as “pure methamphetamine.”</li> <li>• At the time, “pure methamphetamine” was assigned an offense level <i>four to eight</i> levels higher than offenses involving just methamphetamine. [The guideline now refers to methamphetamine (actual), and continues to assign an offense level four to eight levels higher than for methamphetamine mixture.]</li> </ul> <p>The directive instructs the Commission to assign an offense level two levels higher than the same offense involving other forms of methamphetamine. Instead, the Commission assigned offense levels <i>four to eight</i> levels higher than methamphetamine and <i>the same</i> as pure methamphetamine. The Commission explained that the amendment “implements the instruction to the Commission in section 2701 of the Crime Control Act of 1990 . . . in a form compatible with the structure of the guidelines.”</p> <p>In its 1999 Meth Report, it explained that it reasoned that “it could best achieve the enhanced punishment purpose of the instruction in a manner consistent with</p>

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
				<p>the guidelines' structure by treating Ice, a form of methamphetamine that typically was 80 to 90 percent pure, as if it were 100 percent pure methamphetamine.”</p> <p><i>See</i> USSC, <i>Methamphetamine - Final Report of the Methamphetamine Policy Team</i> 9 (Nov. 1999) (final report of the Methamphetamine Policy Team regarding implementation of the Methamphetamine Trafficking Penalty Enhancement Act of 1998), <a href="http://www.ussc.gov/Research/Working_Group_Reports/Drugs/199911_Meth_Report.pdf">http://www.ussc.gov/Research/Working_Group_Reports/Drugs/199911_Meth_Report.pdf</a>.</p> <p>Although the Commission did not implement the directive exactly as Congress ordered, its approach “proved acceptable” to Congress, as it “took no action to modify or reject it.” <i>Id.</i> at 10.</p>
11/01/91				<p><b>Amend. No. 395 (Nov. 1, 1991)</b></p> <p><b>“Pure” changed to “actual”</b></p> <ul style="list-style-type: none"> <li>• Replaced the term “pure methamphetamine” with the term “methamphetamine (actual).”</li> <li>• Clarified that the term “methamphetamine (actual)” refers “to the weight of the controlled substance, itself, contained in the mixture or substance.”</li> </ul> <p><b>Amend. No. 396 (Nov. 1, 1991)</b></p>

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
				<p><b>Single conversion to marijuana</b></p> <ul style="list-style-type: none"> <li>• Simplified the application of the Drug Equivalency Table so that all conversions are to a single drug, marijuana.</li> </ul>
11/01/95				<p><b>Amend. No. 518 (Nov. 1, 1995)</b></p> <p><b>Equivalency – all forms of methamphetamine to be treated as most potent form</b></p> <ul style="list-style-type: none"> <li>• Amended the Drug Equivalency Table so that “all forms of methamphetamine are treated alike, thereby simplifying guideline application.” One result is that <i>l</i>-methamphetamine, “a rather weak form of methamphetamine” that “is not made intentionally” and results from a “botched attempt to produce d-methamphetamine” will be treated “the same as” the more potent d-methamphetamine “(i.e., as if an attempt to manufacture or distribute d-methamphetamine.”</li> <li>• Explained that the change is to eliminate the need for lab testing and to reduce litigation by defendants insisting government prove drug was more potent form.</li> </ul>

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
10/03/96	104-237  Comprehensive Methamphetamine Control Act of 1996, sec. 301.		<p>(a) [R]eview and amend its guidelines and its policy statements to provide for increased penalties for unlawful manufacturing, importing, exporting, and trafficking of methamphetamine, and other similar offenses, including unlawful possession with intent to commit any of those offenses, and attempt and conspiracy to commit any of those offenses. The Commission shall submit to Congress explanations therefor and any additional policy recommendations for combating methamphetamine offenses.</p> <p>(b) In General.—In carrying out this section, the Commission shall ensure that the sentencing guidelines and policy statements for offenders convicted of offenses described in subsection (a) and any recommendations submitted under such subsection reflect the heinous nature of such offenses, the need for aggressive law enforcement action to fight such offenses, and the extreme dangers associated with unlawful activity involving methamphetamine, including—</p>	<p><b>Amend. No. 555 (Nov. 1, 1997)</b></p> <p><b>BOLs for methamphetamine mixture</b></p> <ul style="list-style-type: none"> <li>Increased penalties for methamphetamine drug trafficking offenses by reducing by one-half the quantity of a mixture or substance containing methamphetamine under the Drug Quantity Table at § 2D1.1(c). As a result, the quantity of methamphetamine mixture needed to trigger a guideline range corresponding to the statutory mandatory minimum sentences was 50 grams for five years (compared to 100 grams under the statute) and 500 grams for ten years (compared to 1000 grams in the statute). Through this amendment, guideline penalties for methamphetamine mixtures stood as the single exception to the guideline structure for drug offenses, which otherwise anchored guideline ranges to the mandatory minimum penalties.</li> <li>The Commission did <b>not</b> increase penalties for methamphetamine (actual) or “Ice” methamphetamine. The Commission explained that it decided on these particular amendments  after careful analysis of recent sentencing data, including its own intensive study of methamphetamine offenses, information provided by the Strategic Intelligence Section of the Drug Enforcement Administration</li> </ul>

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
			<p>(1) the rapidly growing incidence of methamphetamine abuse and the threat to public safety such abuse poses;</p> <p>(2) the high risk of methamphetamine addiction;</p> <p>(3) the increased risk of violence associated with methamphetamine trafficking and abuse; and</p> <p>(4) the recent increase in the illegal importation of methamphetamine and precursor chemicals.</p>	<p>concerning recent methamphetamine trafficking levels, dosage unit size, price, and drug quantity, and a variety of other information.</p> <p>The Commission’s later report on methamphetamine offenses provides a more detailed background and context for the above amendment, and analyzes whether it should likewise increase the guideline penalties for methamphetamine (actual) and “Ice” to comport with 1998 statutory increases in the penalties for methamphetamine offenses that (“coincidentally”) aligned with this amendment with respect to methamphetamine mixture. <i>See</i> USSC, <i>Methamphetamine - Final Report of the Methamphetamine Policy Team</i>, at 10-12, 17-18 (Nov. 1999) (final report of the Methamphetamine Policy Team regarding implementation of the Methamphetamine Trafficking Penalty Enhancement Act of 1998), <a href="http://www.uscc.gov/Research/Working_Group_Reports/Drugs/199911_Meth_Report.pdf">http://www.uscc.gov/Research/Working_Group_Reports/Drugs/199911_Meth_Report.pdf</a>.</p>
10/03/96	104-237  Comprehensive Methamphetamine Control Act of 1996, sec. 303.		(a) [D]etermine whether the Sentencing Guidelines adequately punish the offenses described in subsection (b) and, if not, promulgate guidelines or amend existing guidelines to provide an appropriate enhancement of the punishment for a defendant	<p><b>Amend. No. 555 (Nov. 1, 1997)</b></p> <p><b>USSG § 2D1.1(b)(13)(A) – environmental hazard</b></p> <ul style="list-style-type: none"> <li>Amended USSG § 2D1.1 to provide for a two-level upward adjustment “if the offense involved (A) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance, or (B)</li> </ul>

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
			<p>convicted of such an offense.</p> <p>(b) Offense.—The offense referred to in subsection (a) is a violation of section 401(d), 401(g)(1), 403(a)(6), or 403(a)(7) of the Controlled Substances Act (21 U.S.C. 841(d), 841(g)(1), 843(a)(6), and 843(a)(7)), in cases in which in the commission of the offense the defendant violated—</p> <p>(1) subsection (d) or (e) of section 3008 of the Solid Waste Disposal Act (relating to handling hazardous waste in a manner inconsistent with Federal or applicable State law);</p> <p>(2) section 103(b) of the Comprehensive Environmental Response, Compensation and Liability Act (relating to failure to notify as to the release of a reportable quantity of a hazardous substance into the environment);</p> <p>(3) section 301(a), 307(d), 309(c)(2), 309(c)(3), 311(b)(3), or 311(b)(5) of the Federal Water Pollution Control Act (relating to the unlawful discharge of pollutants or</p>	<p>the unlawful transportation, treatment, storage, or disposal of a hazardous waste.”</p> <ul style="list-style-type: none"> <li>• In an application note, provided that the enhancement applies “if the conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. § 6938(d), the Federal Water Pollution Control Act, 33 U.S.C. § 1319(c), or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 5124, 9603(b).”</li> <li>• Invited upward departure in cases where “the enhancement under this subsection may not adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel).</li> <li>• Also in commentary, added that “any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under § 5E1.1 (Restitution) and in fashioning appropriate conditions of supervision . . . .”</li> <li>• Note that Congress did not direct the Commission to amend the guidelines for offenses under § 841(a)</li> </ul>



Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
			<p>hazardous substances, the operation of a source in violation of a pretreatment standard, and the failure to notify as to the release of a reportable quantity of a hazardous substance into the water); or</p> <p>(4) section 5124 of title 49, United States Code (relating to violations of laws and regulations enforced by the Department of Transportation with respect to the transportation of hazardous material).</p>	<p>(sentenced under §2D1.1). Yet, the Commission explained that this amendment was “in response to the directive in section 303 of the Act . . . , [providing] an enhancement of two levels, with an invited upward departure in more extreme cases, for environmental violations occurring in association with an illicit manufacturing or other drug trafficking offense.” The Commission otherwise provided no independent analysis or empirical study of the incidence or harm created by such uncharged conduct, nor did it discuss the constitutionality of punishment for uncharged conduct, or whether sentences for these offenses were inadequate.</p> <p>Later further explained, in amending §§ 2D1.11 and 2D1.12 in similar fashion in 2000, that “[a]lthough the directive did not address manufacturing offenses under 21 U.S.C. § 841(a), the Commission elected to use its broader guideline promulgation authority under 28 U.S.C. § 994(a) to ensure that environmental violations occurring in connection with this more frequently occurring offense were treated similarly.” <i>See</i> Amend. No. 605, <i>infra</i>.</p>
10/01/1997				<p><b>Amend. No. 555 (Nov. 1, 1997)</b></p> <p><b>USSG § 2D1.1(b)(5) – importation</b></p> <ul style="list-style-type: none"> <li>• Added new 2-level SOC if the offense involved “importation of methamphetamine or the manufacture of methamphetamine from listed</li> </ul>

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
				<p>chemicals that the defendant knew were imported unlawfully.” Does not apply if the defendant got the mitigating role adjustment under § 3B1.2.</p> <ul style="list-style-type: none"> <li>• Explained that the amendment was “in response to evidence of a recent, substantial increase in the importation of methamphetamine and precursor chemicals used to manufacture methamphetamine.”</li> </ul>
10/21/98	105-277  Methamphetamine Trafficking Penalty Enhancement Act of 1998, div. E, sec. 2.	<p>Cut in half the quantities triggering the mandatory minimum penalties, as follows:</p> <p><b>5-year MM:</b>  50 grams mixture or 5 grams meth (actual)</p> <p><b>10-year MM:</b>  500 grams mixture or 50 grams meth (actual)</p>		<p><b>Amend. No. 594 (Nov. 1, 2000)</b></p> <p><b>BOLs for methamphetamine (actual) and Ice</b></p> <ul style="list-style-type: none"> <li>• The Commission “conform[ed] the methamphetamine (actual) penalties . . . to the more stringent mandatory minimums established by the Act”:</li> </ul> <p>In taking this action, the Commission follows the approach set forth in the original guidelines for the other principle controlled substances for which mandatory minimum penalties have been established by Congress.</p> <p>As a result, offenses involving 5 grams of meth (actual) are assigned a base offense level 26, and offenses involving 50 grams of meth (actual) are assigned a base offense level 32.</p> <p>In its 1999 Working Group Report, Commission staff suggested that Congress lowered the quantities</p>

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
				<p>triggering the mandatory minimums in part because its earlier amendment (increasing penalties for methamphetamine mixture only, <i>see</i> Amend. No. 555), had been inadequate, and suggested that failing to conform the guideline ranges to the mandatory minimums would be “politically unwise”:</p> <p>The Commission is not required by the legislation to amend the guidelines. Should no action be taken, the mandatory minimums established by Congress will trump the guidelines at sentencing but the impact of the Congressional increase will not be felt throughout the remainder of the Drug Quantity Table. A sentencing “benefit” to an offender of a decision to make no change in the guidelines would occur but would be limited to meth-actual and Ice offenders who are not exposed to a mandatory minimum sentence or who have drug quantities sufficiently above the minimum thresholds that the sentence exceeds the revised statutory minimum. However, un-linking the Drug Quantity Table from the mandatory minimum quantities established by Congress in a manner that reduces sentences would vary from past practice of the Commission and may prove politically unwise.</p> <p><i>See Methamphetamine Report, supra</i>, at 18 &amp; n.50.</p>

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
10/17/00	106-310  Children’s Health Act of 2000, title XXXVI, sec. 3612 [Methamphetamine Anti-Proliferation Act of 2000].		<p>[A]mend the Federal sentencing guidelines in accordance with [the requirements set forth below] with respect to any offense relating to the manufacture, attempt to manufacture, or conspiracy to manufacture amphetamine or methamphetamine.</p> <p>In carrying out this directive, [requires the Commission to]:</p> <p style="padding-left: 40px;">(A) if the offense created a substantial risk of harm to human life (other than a life described in subparagraph (B)) or the environment, increase the base offense level for the offense—</p> <p style="padding-left: 80px;">(i) by not less than 3 offense levels above the applicable level in effect on the date of the enactment of this Act; or</p> <p style="padding-left: 80px;">(ii) if the resulting base offense level after an increase under clause (i) would be less than level 27, to not less than level 27; or</p> <p style="padding-left: 40px;">(B) if the offense created a</p>	<p><b>Amend. No. 608 (Dec. 16, 2000)</b></p> <p><b>USSG §2D1.1(b)(13)(C) – risk of harm to human life other than a minor or to the environment</b></p> <p><b>USSG § 2D1.1(b)(13)(D) – risk of harm to minor or incompetent</b></p> <ul style="list-style-type: none"> <li>• “Tracked the structure of the directive” to amend § 2D1.1 to provide a three-level increase and a minimum offense level of 27 if the offense involved the manufacture of amphetamine or methamphetamine and created a “substantial risk of harm” to human life other than a minor or incompetent (or, for § 2D1.1, to the environment).</li> <li>• Also provided a six-level enhancement and a minimum offense level of 30 if the offense created a substantial risk of harm to a minor or incompetent. [Now at subsection (b)(13)(D).]</li> <li>• Provided commentary “setting forth factors that may be relevant in determining whether a particular offense created a substantial risk of harm.” Explained that it derived these factors not from the statute or directive, which do not define “substantial risk of harm,” but from “an analysis of relevant case law that interpreted ‘substantial risk of harm.’” The Commission did not set forth the relevant case law or any examples.</li> </ul>

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
			<p>substantial risk of harm to the life of a minor or incompetent, increase the base offense level for the offense—</p> <p>(i) by not less than 6 offense levels above the applicable level in effect on the date of the enactment of this Act; or</p> <p>(ii) if the resulting base offense level after an increase under clause (i) would be less than level 30, to not less than level 30.</p> <p>[Emergency authority] [P]romulgate amendments pursuant to this subsection as soon as practicable after the date of the enactment of this Act in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (Public Law 100-182), as though the authority under that Act had not expired.*</p>	<ul style="list-style-type: none"> <li>• Defined “incompetent” as “an individual who is incapable of taking care of the individual’s self or property because of a mental or physical illness or disability, mental retardation, or senility.” Explained that this definition was based on “several state statutes,” but otherwise did not specify its provenance.</li> <li>• Defined “minor” as having the meaning given the term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse), and means “an individual who had not attained the age of 18 years.”</li> <li>• The enhancement was cumulative to the environmental hazard enhancement, <i>see</i> Amend. No. 555, <i>supra</i>.</li> </ul> <p><b>Amend. No. 620 (Nov. 1, 2001)</b></p> <ul style="list-style-type: none"> <li>• Repromulgated the emergency amendment, with modifications, as permanent amendment.</li> <li>• Changed the substantial risk of harm enhancement from cumulative to an alternative to the enhancement for environmental violations.</li> <li>• Provided that the court “shall” (as opposed to “may”) consider four factors listed to determine whether the offense created a substantial risk of harm.</li> </ul>

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
			<p>*Pub. L. No. 100-182, § 21 (Dec. 7, 1987) (authorizing the Commission to promulgate emergency, temporary amendments). Amendments promulgated under this authority are to expire unless made permanent during the regular amendment cycle. This section is forth at 28 U.S.C. § 994 note.</p>	<ul style="list-style-type: none"> <li>Amended the commentary in 2D1.1 to provide that that the court “shall” consider costs of environmental cleanup and harm to individuals and property in cases involving the manufacture of methamphetamine and amphetamine, and “should” consider such costs and harms in cases involving the manufacture of any other controlled substance, in determining restitution and in fashioning conditions of probation or supervised release. <i>See</i> Amend. 555, <i>supra</i>.</li> </ul>
10/17/00	<p>106-310</p> <p>The Children’s Health Act of 2000, title XXXVI, sec. 3611 [Methamphetamine Anti-Proliferation Act of 2000].</p>		<p>[A]mend [the guidelines] in accordance with this section with respect to any offense relating to the manufacture, importation, exportation, or trafficking in amphetamine (including an attempt or conspiracy to do any of the foregoing).</p> <p>In carrying out this directive and with respect to each offense described in subsection (a) relating to amphetamine []:</p> <p>(1) review and amend its guidelines to provide for increased penalties such that those penalties are comparable to the base offense level for methamphetamine; and</p> <p>(2) take any other action the</p>	<p><b>Amend. No. 610 (May 1, 2001)</b></p> <p><b>BOLs for amphetamine</b></p> <ul style="list-style-type: none"> <li>Revised § 2D1.1 to include amphetamine in the Drug Quantity Table with a 1:1 ratio to methamphetamine. The ratio was chosen “because of the similarities of the two substances”: “[A]mphetamine and methamphetamine (1) chemically are similar; (2) are produced by a similar method and are trafficked in a similar manner; (3) share similar methods of use; (4) affect the same parts of the brain; and (5) have similar intoxicating effects.”</li> <li>Distinguished between pure amphetamine and amphetamine mixture in the same manner as pure and mixed methamphetamine.</li> <li>Explained that the “amendment reflects the view that the 1:1 ratio is appropriate given the seriousness of these two controlled substances.”</li> </ul>

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
			<p>Commission considers necessary to carry out this subsection.</p> <p>[E]nsure that the sentencing guidelines for offenders convicted of offenses described above reflect the heinous nature of such offenses, the need for aggressive law enforcement action to fight such offenses, and the extreme dangers associated with unlawful activity involving amphetamines, including –</p> <p>(1) the rapidly growing incidence of amphetamine abuse and the threat to public safety that such abuse poses;</p> <p>(2) the high risk of amphetamine addiction;</p> <p>(3) the increased risk of violence associated with amphetamine trafficking and abuse; and</p> <p>(4) the recent increase in the illegal importation of amphetamine and precursor chemicals.</p> <p>Emergency authority: [Promulgate these amendments] as soon as</p>	<p><b>Amend. No. 622 (Nov. 1, 2001)</b></p> <p><b>Amphetamine – importation</b></p> <ul style="list-style-type: none"> <li>• Repromulgated as permanent the emergency amendment above, with some modifications.</li> <li>• Amended § 2D1.1 to make the enhancement for importation of methamphetamine applicable to amphetamine offenses as well.</li> </ul>

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
			<p>practicable after the date of the enactment of this Act in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (Public Law 100-182), as though the authority under that Act had not expired.*</p> <p>*Pub. L. No. 100-182, § 21 (Dec. 7, 1987) (authorizing the Commission to promulgate emergency, temporary amendments). Amendments promulgated under this authority are to expire unless made permanent during the regular amendment cycle. This section is forth at 28 U.S.C. § 994 note.</p>	
03/09/06	109-177  PATRIOT Reauthorization Act, sec. 734.	<p><b>New mandatory consecutive sentence:</b></p> <p>Whoever violates [21 U.S.C. § 841 (a)(1)] by manufacturing or distributing, or possessing with intent to manufacture or distribute, methamphetamine or its salts, isomers or salts of isomers on premises in which an individual who is under the age of 18 years is</p>		<p><b>Amend. No. 705 (Nov. 1, 2007)</b></p> <p><b>USSG § 2D1.1(b)(13)(B), (C)(i) – mandatory consecutive sentences for convictions under 21 U.S.C. § 860a</b></p> <ul style="list-style-type: none"> <li>• Added two-level increase (with a minimum offense level of 14) “if the defendant is convicted under 21 U.S.C. § 860a of distributing, or possessing with intent to distribute, methamphetamine on premises where a minor is present or resides.”</li> <li>• Added three-level increase (with a minimum offense level of 27) if the defendant is convicted under 21 U.S.C. § 860a of manufacturing, or possessing with intent to manufacture, methamphetamine on</li> </ul>



Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
		<p>present or resides, shall, in addition to any other sentence imposed, be imprisoned for a period of any term of years but not more than 20 years, subject to a fine, or both.</p> <p>21 U.S.C. § 860a.</p>		<p>premises where a minor is present or resides,” but in which the offense did not create a substantial risk of harm to the life of a minor.</p> <ul style="list-style-type: none"> <li>• Explained that these changes “account for the spectrum of harms created by methamphetamine offenses, and to address the specific harms created by 21 U.S.C. § 860a” by “build[ing] on the ‘substantial risk enhancement,’ promulgated in 2000 in response to the Methamphetamine Anti-Proliferation Act of 2000.” <i>See</i> Amends. No. 608 and 620, <i>supra</i>.</li> <li>• The Commission “determined that distributing, or possessing with the intent to distribute, methamphetamine on a premises where a minor is present or resides presents a greater harm than discharging a hazardous substance into the environment, but is a lesser harm than the substantial risk of harm to adults or to the environment created by the manufacture of methamphetamine.”</li> <li>• As before, in any methamphetamine manufacturing offense which creates a substantial risk of harm to the life of a minor, a six-level enhancement and a minimum offense level of level 30 will apply.</li> </ul>
08/03/10	111-220  Fair Sentencing		<b>Directive:</b> [T]he United States Sentencing Commission shall review and amend the Federal sentencing	<b>Amend. No. 748 (Nov. 1, 2010)</b>  <b>USSG § 2D1.1(b)(12) – maintaining a premises</b>

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
	Act of 2010, sec. 6(2), 8.		<p>guidelines to ensure an additional increase of at least 2 offense levels if--</p> <p>...</p> <p>(2) the defendant maintained an establishment for the manufacture or distribution of a controlled substance, as generally described in section 416 of the Controlled Substances Act (21 U.S.C. 856) . . . .</p> <p>Sec. 8 Emergency amendment authority:</p> <p>The United States Sentencing Commission shall--</p> <p>(1) promulgate the guidelines, policy statements, or amendments provided for in this Act as soon as practicable, and in any event not later than 90 days after the date of enactment of this Act, in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note), as though the authority under that Act had not expired;* and</p> <p>(2) pursuant to the emergency</p>	<ul style="list-style-type: none"> <li>Added new SOC at subsection (b)(12) to provide 2-level enhancement “[i]f the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance.” Also added a new Application Note 28 to define “premises” by reference to the background commentary to § 2D1.8 (a “building, room, or enclosure”), to set forth two factors to consider in making the determination (possessory interest and extent of control), and to emphasize that in order for the enhancement to apply, manufacturing or distributing a controlled substance, though not necessarily the “sole purpose” for which the premises is maintained, must be “one of the defendant’s primary or principal uses of the premises,” rather than an “incidental or collateral” use.</li> </ul> <p><b>Amend. No. 750 (Nov. 1, 2011)</b></p> <p><b>Repromulgated the emergency amendment as permanent.</b></p> <ul style="list-style-type: none"> <li>Added new commentary regarding the new SOC at subsection (b)(12) for maintaining a drug-involved premises for the purpose of manufacturing or distributing a controlled substance to specify that “distribution” includes “storage of a controlled substance for the purpose of distribution.”</li> </ul>

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
			<p>authority provided under paragraph (1), make such conforming amendments to the Federal sentencing guidelines as the Commission determines necessary to achieve consistency with other guideline provisions and applicable law.</p> <p><b>Section 856 (“Maintaining a drug-involved premises”):</b> It is unlawful to</p> <p>(1) knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance; [or]</p> <p>(2) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing,</p>	<ul style="list-style-type: none"> <li>• Explained that “[t]he new amendment differs from the temporary, emergency revisions in clarifying that distribution includes storage of a controlled substance for the purpose of distribution.” The Commission gave no reason for expanding the reach of the SOC or for defining “distribution” to mean “storage for purposes of distribution.”</li> </ul>

Date	Congressional Action			Commission Action and Guideline Provision Affected
	Public Law	New Statutory Penalty	Directive to the Commission	
			<p>or using a controlled substance.</p> <p>*Pub. L. No. 100-182, § 21 (Dec. 7, 1987) (authorizing the Commission to promulgate emergency, temporary amendments). Amendments promulgated under this authority are to expire unless made permanent during the regular amendment cycle. This section is forth at 28 U.S.C. § 994 note.</p>	