

OVERDOSES

IN FEDERAL DRUG TRAFFICKING CRIMES



United States Sentencing Commission

March 2025



OVERDOSES IN **FEDERAL DRUG TRAFFICKING CRIMES**

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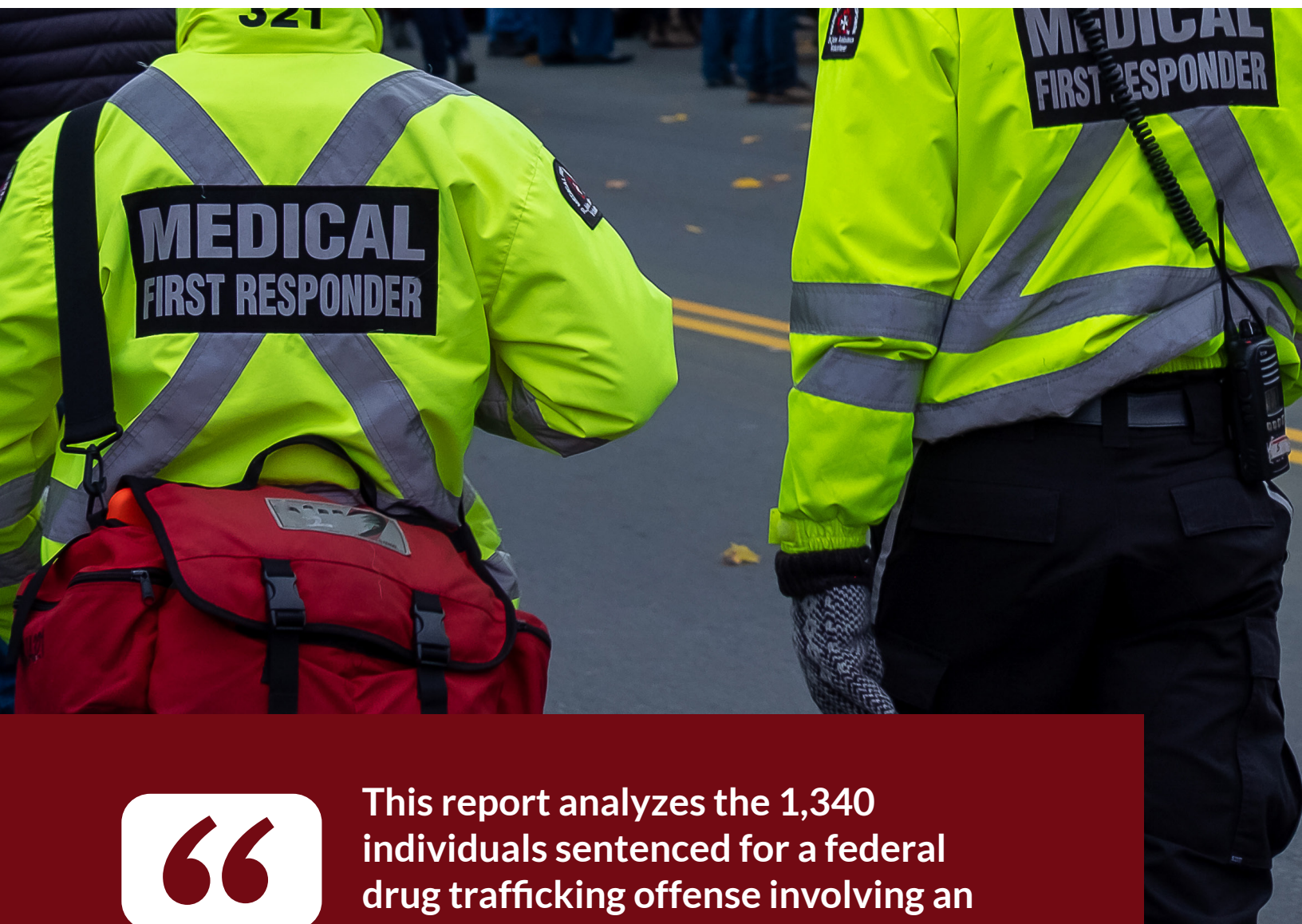
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This report analyzes the 1,340 individuals sentenced for a federal drug trafficking offense involving an overdose from FY2019 to FY2023.

Introduction

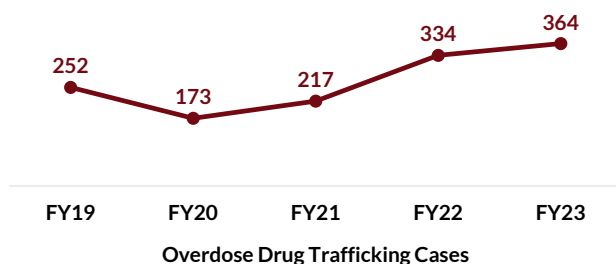
More than 780,000 Americans died from a drug overdose in the last ten years.¹ Overdose deaths have increased more than 300 percent from the level two decades ago.² The number of such deaths has continued to increase in recent years, with the Centers for Disease Control reporting that 91,799 people died of drug overdoses in 2020, 106,699 in 2021, 107,941 in 2022, and 105,007 in 2023.³ Provisional data shows a recent decline in overdose deaths beginning in late 2023 and continuing into 2024.⁴ Overdoses remain one of the leading causes of deaths in adults in the United States.⁵ While fentanyl and fentanyl analogues, methamphetamine, cocaine, and heroin are the drugs most often involved in these deaths,⁶ synthetic opioids like fentanyl—which is up to 50 times more potent than heroin—contribute to nearly 70 percent of overdose deaths.⁷

In this report, the Commission examines all overdoses identified in drug trafficking cases reported to the Commission for fiscal years 2019 to 2023. One or more deaths occurred in more than three-quarters of these cases, while no deaths occurred in the remaining cases. The Commission is able to collect information about the overdoses reported in these cases through the sentencing documents the courts provide to the Commission in every case.⁸ Using that information, this report provides an analysis of the 1,340 individuals sentenced for a federal drug trafficking offense involving an overdose in fiscal years 2019 to 2023. In it,

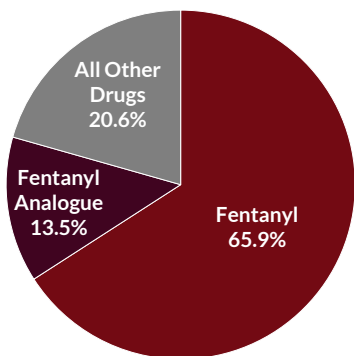
the Commission analyzes the demographic characteristics of these individuals, the offense conduct that occurred in the case, and how the courts sentenced these individuals—including the application of sentencing guideline provisions that provide for heightened base offense levels when the offense of conviction established that death or serious bodily injury resulting from an overdose occurred, or departures from the guideline range for death or physical injury, or how often courts varied from the guideline range for a similar reason. Additionally, in this report, the Commission provides the results of a special data collection project to explore the outcome of each overdose, the type of drug involved in the overdose, the victim's knowledge of the drug they were taking, and the sentenced individual's conduct during the offense.

Key Findings

1 Cases involving an overdose increased by 44 percent between fiscal years 2019 and 2023 in the federal caseload.



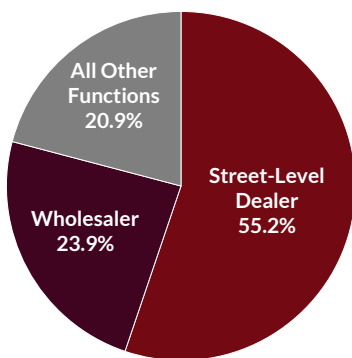
2 Fentanyl and its analogues were involved in nearly 80 percent (79.4%) of the overdose cases in this study.



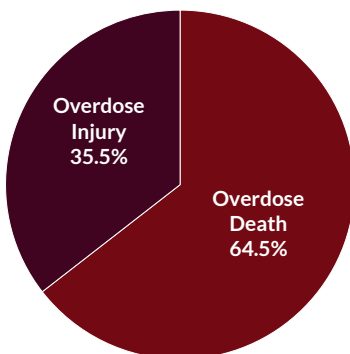
3 Less than five percent (4.8%) of sentenced individuals in this study knowingly misrepresented the drugs they were trafficking. Most people selling drugs in this study and most of those who overdosed on these drugs did not know the exact drugs involved in the transaction.

- Almost 80 percent of the victims who overdosed on fentanyl did not know they were taking that drug.
- 92 percent of victims who overdosed on a fentanyl analogue did not know they were taking that drug.
- Most overdose victims believed they were taking heroin, oxycodone, or cocaine.

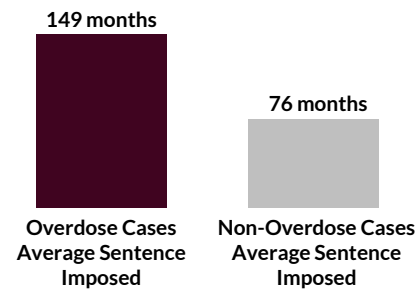
4 Over half (55.2%) of the sentenced individuals in this study performed the function of a street level dealer.



5 Nearly two-thirds (64.5%) of the 2,112 victims in this study suffered a fatal overdose.



6 The average sentence imposed in cases involving an overdose was 149 months, approximately double the average sentence in cases where no overdose was reported, which was 76 months.



Sentences imposed in cases with an overdose varied by offense conduct:

- The average sentence in cases with a single, non-fatal overdose was 125 months.
- The average sentence in cases with multiple overdoses, of which at least one was fatal, was 177 months.
- In cases where an overdose victim died and the sentenced individual failed to render aid or caused further harm to an overdose victim, sentences were longer on average, at 210 and 216 months, respectively.

Legal Background

Drug trafficking offenses involving overdoses that result in death or serious bodily injury have increased penalties under various statutes and guideline provisions. Courts may also consider guideline departures for death or significant physical injury or impose variances for similar reasons.

Statutory Provisions

The most commonly prosecuted drug offenses are violations of 21 U.S.C. §§ 841(a) and 960(a). These statutes prohibit distributing, manufacturing, importing, and possessing with intent to distribute specific controlled substances.⁹ Under both provisions, mandatory minimum penalties are tied to the type and quantity of the controlled substance involved in the offense.¹⁰ When certain quantity thresholds are met, a five-year mandatory minimum penalty and a maximum term of 40 years applies.¹¹ Larger quantities increase the mandatory minimum to ten years, with a maximum of life imprisonment.¹²

Higher penalty ranges apply if death or serious bodily injury result from use of the controlled substance.¹³ In those cases, the mandatory minimum term of imprisonment is 20 years, and the maximum is life.¹⁴ If the offense involved a schedule III controlled substance, the statutory maximum penalty is 15 years.¹⁵ Because the “death results” enhancements increase the statutory minimum and maximum penalties to which an individual is subject, it is an element of the offense that must be submitted to the jury and found beyond a reasonable doubt by a jury or judge.¹⁶ Additionally, the substance distributed by the individual must be the immediate or “but for” cause of the death or serious bodily injury to receive the enhanced statutory penalties.¹⁷

The heightened statutory penalties that apply when death or serious bodily injury result are enhanced further when the sentenced individual has a prior conviction for a “felony drug offense”¹⁸ or, after the enactment of the First Step Act of 2018, a prior conviction for a “serious drug felony”¹⁹ or “serious violent felony.”²⁰ When the

Table 1. Mandatory Minimum Penalties under Section 841(b)(1)²¹

Statutory Provision	Simple Violations	Qualifying Prior Conviction	Death or Serious Bodily Injury	Both
21 U.S.C. § 841(b)(1)(A)	10 years	15 years (25 if two or more)	20 years	Life
21 U.S.C. § 841(b)(1)(B)	5 years	10 years	20 years	Life
21 U.S.C. § 841(b)(1)(C)	None	None	20 years	Life

offense results in death or serious bodily injury and the individual has a qualifying prior conviction, the mandatory minimum penalty increases to life imprisonment.²² Table 1 summarizes the applicable mandatory minimums for offenses based solely on the quantity and drug type, for offenses in which death or serious bodily injury resulted, and for offenses in which both death or serious bodily injury resulted and the individual has the qualifying criminal history.

Sentencing Guideline Provisions

Individuals convicted of violating sections 841(a) and 960(a) are sentenced under Part D of Chapter Two of the *Guidelines Manual*.²³ The principal drug trafficking guideline is §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking), which typically applies to convictions for distributing, manufacturing, importing, or possessing with intent to distribute controlled substances.

In most cases where §2D1.1 applies, the court determines a Base Offense Level (BOL) between level 6 and 38, depending on the type and quantity of the drugs involved in the offense. However, that guideline also provides for enhanced base offense levels when an offense involves death or serious bodily injury. This is accomplished through alternative heightened base offense levels in §2D1.1 that apply when the sentenced individual was convicted under a specific statute listed in the guideline and death or serious bodily injury resulted from the offense.²⁴

For example, if an individual is convicted of one of the enumerated statutory provisions and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance, a BOL of 38 applies (235 to 293 months at Criminal History Category I).²⁵ However, if the individual also has one or more prior qualifying convictions, a BOL of 43 applies (life imprisonment for all criminal history categories).²⁶



Most of the alternative heightened base offense levels are based on the mandatory minimum penalties provided for in sections 841(b) and 960(b). Therefore, the sentences imposed on individuals sentenced under §2D1.1(a)(1)–(2) will generally meet or exceed the statutory minimum penalty. For example, the heightened BOL at §2D1.1(a)(2) is set at level 38 (235 to 293 months at Criminal History Category I) to correspond to the 20-year (240 month) mandatory minimum for when death or serious bodily injury occurs.²⁷ The Commission has recently amended §2D1.1(a)(1)–(a)(4) twice to incorporate statutory changes and to address uncertainty about when the alternative heightened base offense levels are intended to apply.

Recent Amendments to the Alternative Heightened Base Offense Levels at §2D1.1(a)(1)–(a)(4)

The First Step Act of 2018 changed the penalties and the type of prior offenses that trigger the enhanced penalties at §2D1.1(a)(1) and §2D1.1(a)(3).²⁸ As a result, §2D1.1(a)(1) was no longer consistent with the amended statutory provisions and while §2D1.1(a)(3) remained consistent, amendments were needed to make it conform with the amended statutory provisions.

Shortly after the First Step Act's enactment, the Commission lost its quorum of voting members and was unable to amend the *Guidelines Manual* to conform with the Act. After regaining its quorum, the Commission in April 2023 promulgated an amendment incorporating the amended statutory provisions into the *Guidelines Manual*.²⁹

During the 2023–2024 amendment cycle, the Commission received public comment expressing uncertainty about whether §2D1.1(a)(1)–(a)(4) applied only when the individual was convicted of an offense under sections 841 or 960 that imposes a mandatory minimum penalty when the offense results in death or serious bodily injury or whenever an individual met the applicable requirements based on relevant conduct.

The Commission in April 2024 promulgated an amendment to clarify that §2D1.1(a)(1)–(4) apply only when the individual is convicted of an offense under sections 841(b) or 960(b) to which the applicable enhanced statutory mandatory minimum term of imprisonment applies, or when the parties have stipulated to: (i) such an offense for purposes of calculating the guideline range under §1B1.2 (Applicable Guidelines); or (ii) such base offense level.³⁰

The amendment clarifies the Commission's original intent that the alternative heightened base offense levels at §2D1.1(a)(1)–(4) apply because the statutory elements have been established and the individual was convicted under the enhanced penalty provision provided in sections 841(b) or 960(b).³¹

Sentences Outside the Guideline Range

The *Guidelines Manual* provides for upward departures that may apply in drug trafficking offenses involving death or serious bodily injury. Under §5K2.1 (Death (Policy Statement)), the guidelines provide that “[i]f death resulted, the court may increase the sentence above the authorized guideline range.”³² Section 5K2.2 (Physical Injury (Policy Statement)) provides for an increase above the guideline range if significant physical injury resulted.³³ Both §§5K2.1 and 5K2.2 provide factors for courts to consider when determining the extent of such departures and encourage consideration of both the number of fatalities and manner of death³⁴ and the extent of the injury.³⁵ These provisions may be applied in a drug trafficking offense that involved a drug overdose even if the court does not apply the enhanced base offense levels for death or serious bodily injury.

Finally, by statute, a court must consider a variety of other factors in addition to the guidelines when imposing a sentence that is “sufficient, but not greater than necessary,” to comply with the purposes of sentencing, including the nature and circumstances of the offense and the history and characteristics of the individual.³⁶ As described in more detail below, some courts have cited death and serious bodily injury as reasons for imposing a sentence outside the guideline range, sometimes in cases where the court did not apply the enhanced guideline penalties or related departure provisions.



Methodology

This report examines cases in which the sentence was imposed between fiscal years 2019 and 2023 under §2D1.1 (Drug Trafficking) of the *Guidelines Manual*.³⁷ For this report, the Commission conducted a special data collection project to identify whether the drug trafficking case involved an overdose. For those cases in which an overdose was identified, the Commission then collected additional information beyond what is ordinarily collected as part of the Commission's routine data collection process. The Commission collected detailed information about the drug that was involved in the overdose, the location of the overdose,

the sentenced individual's conduct during the offense, information about the overdose victim, and whether any person died from an overdose. All information was collected from the presentence investigation reports (PSR), statement of reasons (SOR), plea agreements, or the charging documents provided by the court.³⁸

Drug trafficking cases were divided into two categories: Overdose Cases (OD Cases) and Non-Overdose Cases (Non-OD Cases). All cases were presumptively classified as Non-Overdose Cases. Individual cases then were identified as an Overdose Case if it met one of three separate conditions, as discussed below.

Overdose – Base Offense Level

1

The Commission first identified all cases in which the court applied an alternate base offense level under §2D1.1(a)(1)–(a)(4), which can apply in drug trafficking offenses where death or serious bodily injury resulted from the use of the controlled substance trafficked in the offense. The Commission identified 708 cases meeting these criteria.

Overdose – Departure/Variance

Next, the Commission examined all cases in which the court did not apply an alternate base offense level under §2D1.1(a)(1)–(a)(4) but departed (upward) from the guideline range that applied in the case and where the court cited either §5K2.1 (death) or §5K2.2 (physical injury) as a reason for the sentence. The Commission also identified cases where the court otherwise imposed a sentence above the guidelines range based on the section 3553(a) factors (*i.e.*, a variance) and cited a death or bodily injury as a reason for the sentence.

2

For all cases in the Overdose – Departure/Variance subgroup, the Commission reviewed the documentation to confirm that the death or injury the court cited was related to an overdose involving a drug trafficked in the offense. If the death or injury cited was unrelated to an overdose, the case remained classified as a Non-Overdose Case. The Commission identified 181 additional cases meeting these criteria.

Overdose – Conduct

Finally, the Commission identified any remaining cases where an overdose was reported. To do this, optical recognition software was used to search the Presentence Investigation Reports of all individuals sentenced under §2D1.1 in fiscal years 2019 to 2023, to identify any other cases where an overdose was reported. The Commission then reviewed each case identified to confirm whether the overdose was related to the sentenced individual's conduct. When the PSR stated that a sentenced individual sold or supplied the drug to a person who subsequently overdosed, or when toxicology reports indicated that a drug the sentenced individual supplied was involved in an overdose, the case was classified as an Overdose – Conduct case.³⁹ For the purposes of this study, an overdose was determined to have occurred when an individual received medical intervention after ingesting drugs received from the sentenced individual. The Commission identified 451 additional cases through this process.

3

In total, the Commission identified 1,340 drug trafficking cases involving an overdose where the sentence was imposed between fiscal years 2019 and 2023.

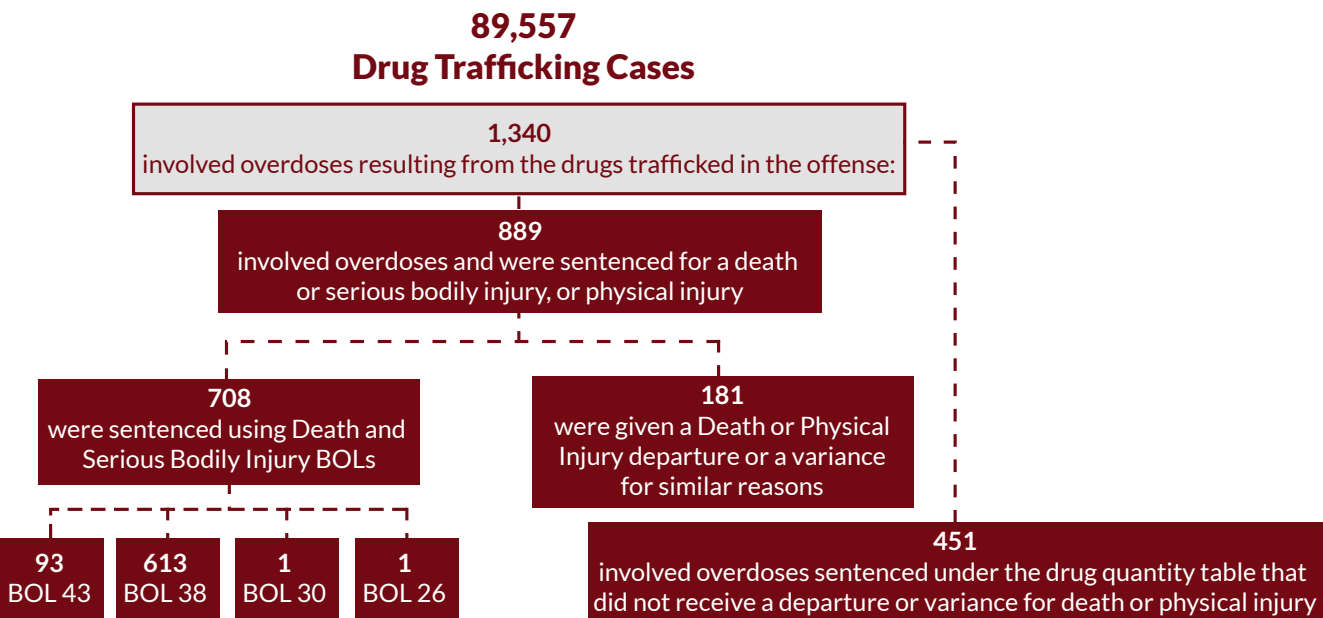
Data Overview of Overdose Cases

Prevalence

Federal drug trafficking cases involving an overdose are relatively rare. Federal courts sentenced 326,656 individuals between fiscal years 2019 and 2023, of whom 89,557⁴⁰ were sentenced under §2D1.1 for a drug trafficking offense (Figure 1). The vast majority (98.5%) of those cases did not involve an overdose. One and a half percent (n=1,340) of drug trafficking offenses involved an overdose resulting from the drug trafficked in the offense.

As discussed in the Methodology section above, of the 1,340 cases the Commission identified as involving an overdose, in 708 cases the court applied one of the four alternate base offense levels at §2D1.1. In 181 cases, the court departed or varied above the applicable guideline range and cited the death or physical injury of someone who used the drugs that had been trafficked as a reason for the sentence imposed. In the remaining 451 cases involving an overdose, the court sentenced the individual using a base offense level determined by the quantity of drugs involved in the case and did not cite death or physical injury as a reason for the sentence.⁴¹

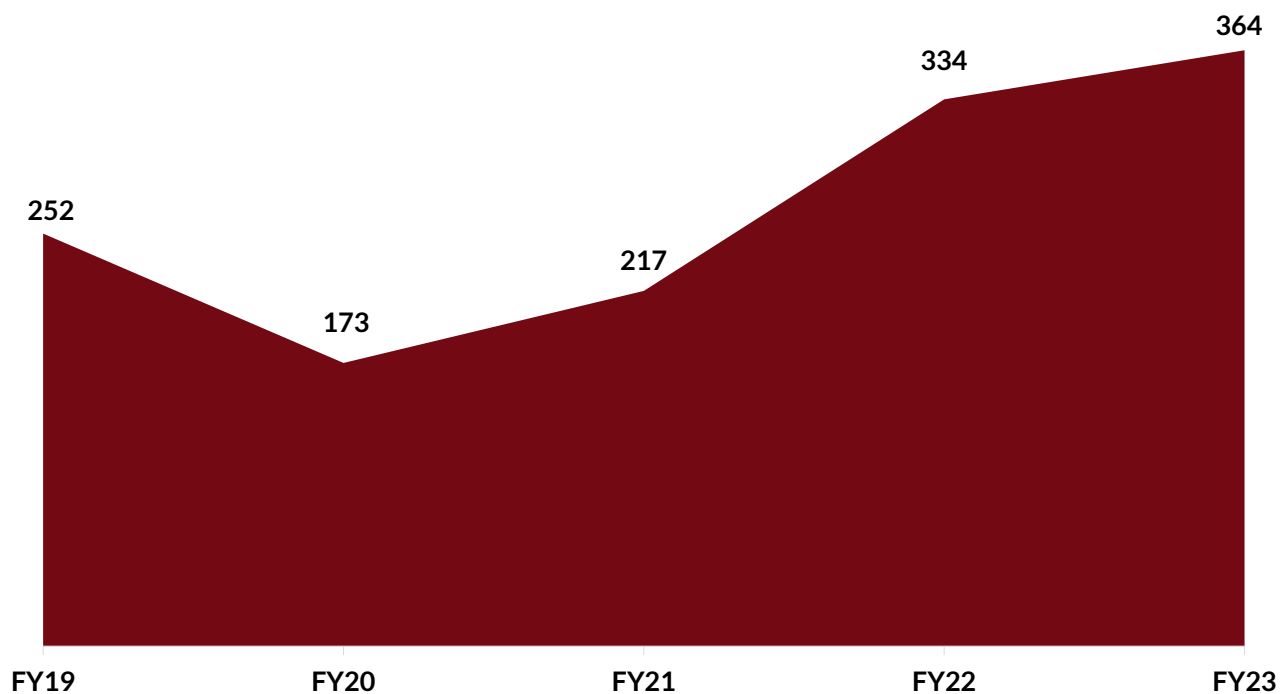
Figure 1. Overdose Drug Trafficking Cases, Fiscal Years 2019–2023



As discussed above, drug trafficking cases in which an overdose was reported comprised just one and a half percent of all individuals sentenced for drug trafficking in fiscal years 2019 through 2023. Fewer than 400 drug trafficking cases each year involved

an overdose during that time period (Figure 2). The number of drug trafficking cases involving an overdose, however, increased by 44.4 percent from 252 in fiscal year 2019 to 364 in fiscal year 2023.

Figure 2. Overdose Drug Trafficking Cases Over Time, Fiscal Years 2019–2023



Geographic Dispersion

Table 2 presents Overdose Case data by district in two ways: the number of Overdose Cases and the percentage of Overdose Cases in the overall drug trafficking caseload. The Middle District of Florida had the highest number of Overdose Cases (n=72) in the last five fiscal years, while the District of Delaware

had the highest percentage of Overdose Cases among its drug trafficking offense caseload at 13.0 percent. The districts of North Dakota, Western New York, and Southern Iowa ranked highly in Overdose Cases both in terms of raw numbers and as a percentage of their overall drug trafficking caseload. In contrast, the districts along the Southwestern border generally had the highest number of Non-Overdose Cases.⁴²

Table 2. Top Districts for Overdose Cases, Fiscal Years 2019–2023

Overdose Cases			
District	#	District	%
Middle Florida	72	Delaware	13.0%
Southern Iowa	53	North Dakota	6.6%
Southern New York	50	Western New York	5.9%
North Dakota	50	Middle Pennsylvania	5.0%
Western New York	49	Southern Iowa	4.9%

Demographics

The demographic characteristics of individuals sentenced in Overdose Cases were fairly similar to those in Non-Overdose Cases (Table 3). Both groups were similar in terms of gender, education, and age. Race and citizenship differed between the two groups, however, with individuals

sentenced for an Overdose Case more likely to be White (45.4%) or Black (38.8%) while individuals sentenced for Non-Overdose Cases were more likely to be Hispanic (43.7%). Individuals sentenced for Overdose Cases were more likely to be U.S. Citizens (97.5%) compared to those sentenced for Non-Overdose Cases (81.0%).

Table 3. Demographics of Individuals Sentenced in Overdose and Non-Overdose Cases, Fiscal Years 2019–2023

Overdose Cases		Non-Overdose Cases
83.4%	Male	82.7%
45.4%	White	25.8%
38.8%	Black	27.3%
13.0%	Hispanic	43.7%
2.9%	Other	3.2%
97.5%	U.S. Citizen	81.0%
44.8%	H.S. Graduate	40.3%
35	Average Age	37
III	Average CHC	III
6	Average CH Points	5

Individuals missing information required for any given analysis were excluded from that analysis.

Drug Type⁴³

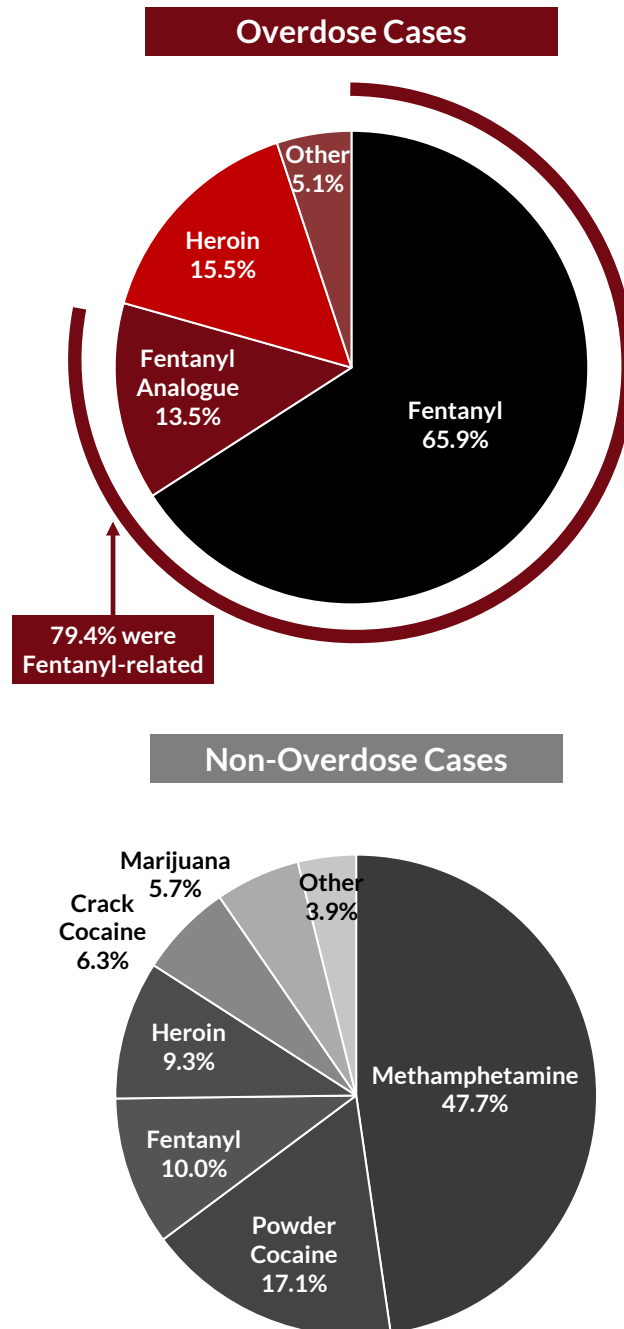
The Commission classifies each drug trafficking case by the type of drug that was trafficked. During its routine data collection, the Commission determines the drug type involved in the offense. When more than one drug is trafficked, the Commission assigns the substance producing the highest converted drug weight⁴⁴ as the “primary drug” in the drug trafficking offense.⁴⁵ As part of the special data collected for this report, however, in Overdose Cases where more than one drug was trafficked, the Commission identified the drug that was involved in the overdose event and classified the case based on the drug type that was involved in the overdose.⁴⁶ In some cases, the drug involved in the overdose had a lower converted drug weight than another drug trafficked by the sentenced individual.

The drug type in Overdose Cases varied significantly from the drug type in Non-Overdose Cases. Opioids such as fentanyl, fentanyl analogues, and heroin were involved in the overdose event in 95 percent (94.9%) of Overdose Cases (Figure 3). All other drugs, including methamphetamine and cocaine, were involved in the overdose event in only five percent (5.1%) of Overdose Cases.

By comparison, methamphetamine (47.7%) and powder cocaine (17.1%) accounted for nearly two-thirds of the Non-Overdose caseload between fiscal years 2019 and 2023 (Figure 3). Fentanyl and fentanyl analogues accounted for ten percent (10.0%) of the Non-Overdose caseload during those same five years. Heroin accounted for less than ten percent (9.3%) of the Non-Overdose caseload. While opioids were involved in most of the overdose deaths reported in this study, they do not make up a large portion of the overall drug trafficking caseload.

As part of the special data collection project undertaken for this report, the Commission examined whether individuals sentenced for drug trafficking in Overdose Cases also were using illegal drugs while engaged in drug trafficking, and whether that drug was the same as the drugs they were trafficking. More than half (57.7%) of the individuals in this study were found to be using the same drug type as one of their victims.⁴⁷

Figure 3. Drug Type Involved in Overdose and Non-Overdose Cases, Fiscal Years 2019–2023



The primary drug type was missing in 5.2% of Overdose Cases (n=70). These sentenced individuals were excluded from Overdose Cases analysis.

Function

Individuals sentenced for drug trafficking usually engage in specific activities, often related to the hierarchical structure of the organizations of which they are a part. As part of the data collected for this study, the Commission analyzed each sentenced individual's activity and determined that person's most serious function in the overdose offense (Table 5)⁴⁸ using a classification system developed for prior Commission reports.⁴⁹ The functions are ranked by the seriousness of the conduct from importer to low-level employee.⁵⁰

Based on the conduct detailed in the presentence report, the Commission found that the majority (55.2%) of individuals sentenced for an Overdose Case functioned as street level dealers (Table 4). The next most common function was a wholesaler (23.9%). Less than seven percent of the individuals sentenced in Overdose Cases held high-level functions as managers or supervisors (2.0%) or organizers or leaders in a drug organization (4.5%). In addition to the ranked functions, the Commission found 39 (2.9%) of those sentenced were employed in the medical profession.

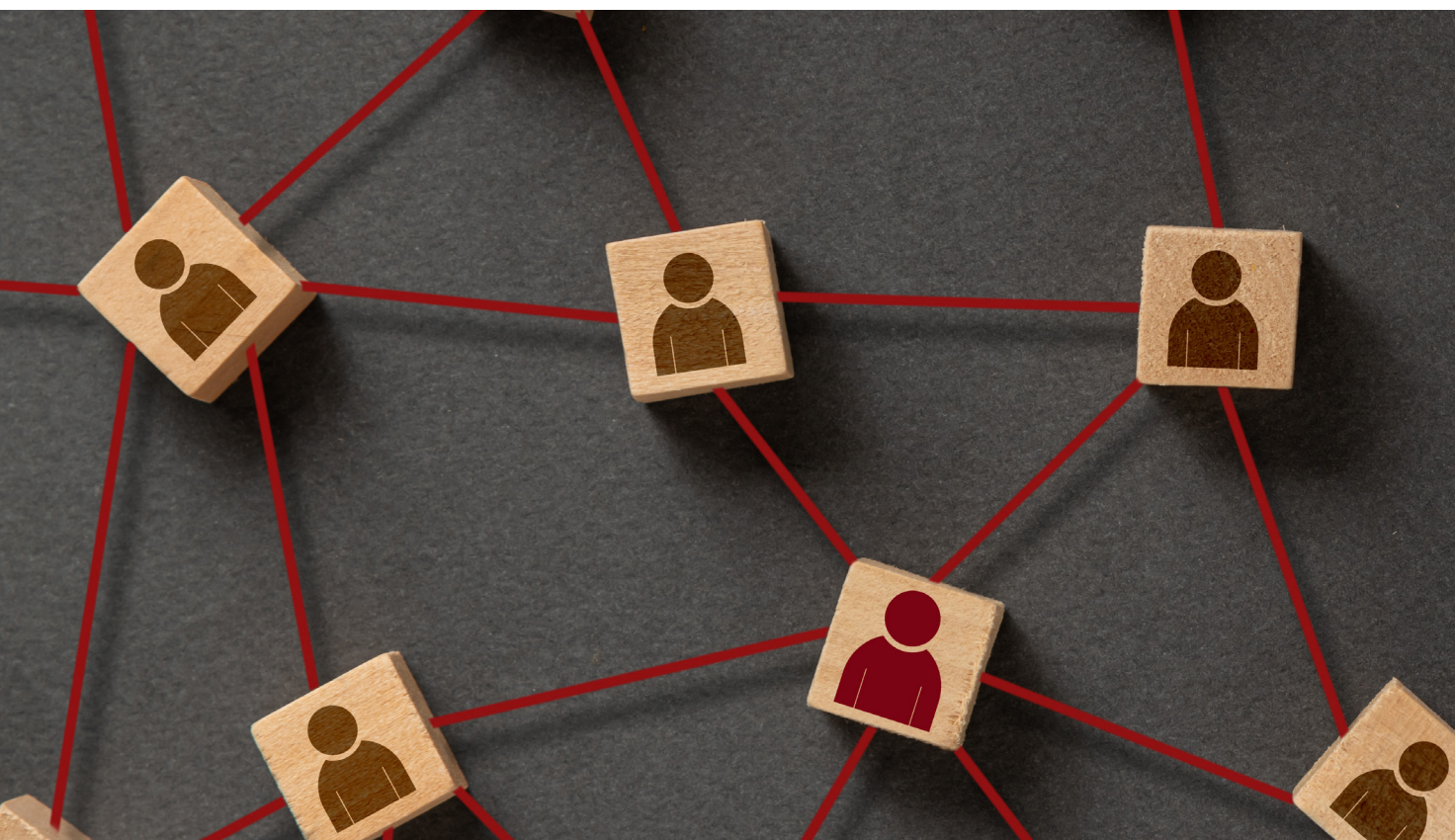


Table 4. Most Serious Function in Overdose Cases, Fiscal Years 2019–2023

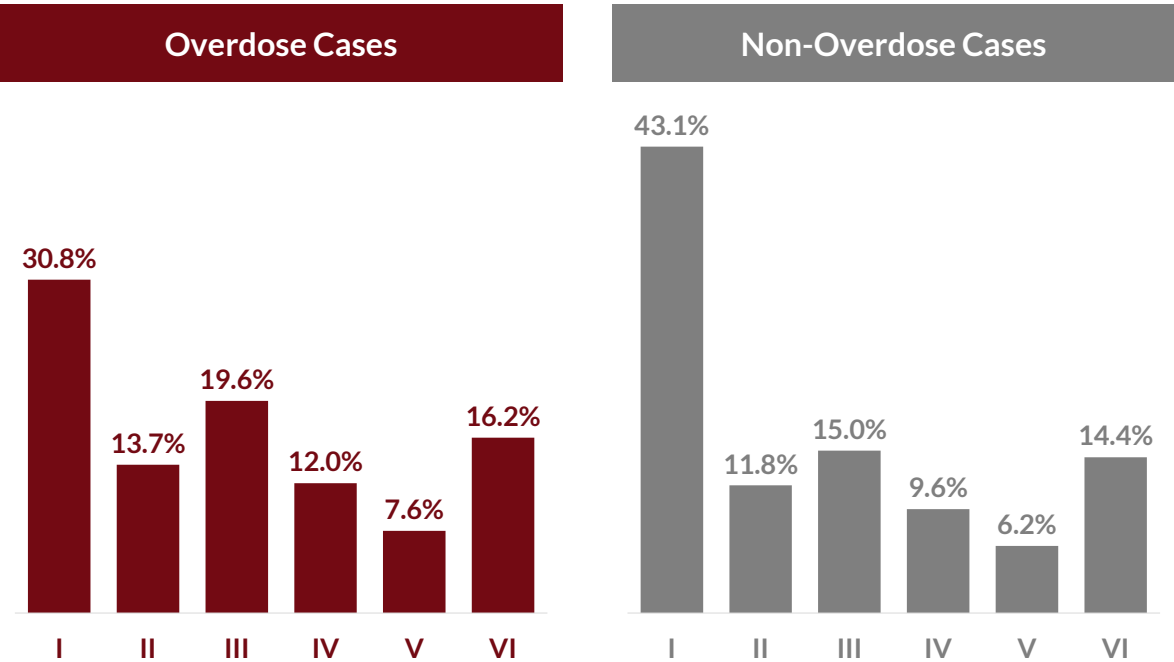
IMPORTER 1.3% (n=18) Imports any quantity of drugs, not just transporting drugs for someone else; owns the drugs.
HIGH LEVEL SUPPLIER 5.6% (n=75) Supplies large quantities of drugs, usually to other drug distributors; is near the top of the distribution chain; and generally, does not deal in retail amounts; may employ no or very few subordinates; owns the drugs.
ORGANIZER/LEADER 4.5% (n=60) Organizes, leads, directs, or otherwise runs a drug distribution organization; has the largest share of the profits and the most decision-making authority; owns the drugs.
WHOLESALE 23.9% (n=320) Buys and sells more than retail/user-level quantities in a single transaction; sells any amount to another dealer; owns the drugs.
MANAGER/SUPERVISOR 2.0% (n=27) Serves as a “lieutenant” in a drug organization; manages or supervises a portion of the drug operation (manufacturing, importation, or distribution); takes instructions from a superior and conveys them to subordinates; supervises at least one other co-participant in an organization; does not own the drugs.
STREET-LEVEL DEALER 55.2% (n=740) Distributes retail/user quantities directly to the user; owns the drugs.
BROKER/GO-BETWEEN 5.7% (n=76) Arranges for two parties to buy/sell drugs or directs potential buyers to a potential seller; does not own the drugs.
COURIER 0.8% (n=10) Transports or carries drugs in or on their person or with the assistance of a vehicle or other equipment; does not own the drugs.
RENTER/STORER 0.1% (n=1) Provides own residence (barns, storage bins, buildings), land, or equipment for use to further the offense in exchange for payment or compensation; does not own the drugs.
EMPLOYEE 1.0% (n=13) Performs very limited, low-level function in the offense including running errands, answering the telephone, scouting, receiving packages, packaging the drugs, acting as a lookout, or acting as a deckhand or crew member on a vessel or aircraft transporting drugs; does not own the drugs.

Criminal History

The criminal histories of individuals sentenced in Overdose Cases were generally similar to those of individuals sentenced in Non-Overdose Cases, although some differences were observed. While the majority of individuals in both groups were assigned to Criminal History Category (CHC) I, a higher proportion of individuals sentenced in Non-Overdose Cases were in CHC I compared to those sentenced

in Overdose Cases (43.1% to 30.8%). Conversely, more individuals (45.3%) sentenced in Overdose Cases were in categories II–IV than Non-Overdose Cases (36.4%). Approximately 15 percent of individuals sentenced in Overdose (16.2%) and Non-Overdose Cases (14.4%) were assigned to CHC VI, the highest criminal history category. Individuals sentenced in Overdose Cases had a slightly higher average criminal history score (6 points) compared to individuals sentenced in Non-Overdose Cases (5 points).

Figure 4. Criminal History Category in Overdose and Non-Overdose Cases, Fiscal Years 2019–2023



Offense Conduct Relating to the Overdose

Overdose Victims

The Commission determined that there were more than two thousand overdose victims (n=2,112) in the 1,340 Overdose Cases of this study. The average number of victims in these cases was two but ranged

from one to 19.⁵¹ Almost two-thirds (64.5%; n=1,362) of overdose victims ultimately died as a result of the overdose, while approximately one-third (35.5%; n=750) sustained an injury (Figure 5). Approximately two-thirds (65.9%) of overdose victims were male and one-third (34.1%) were female (Figure 6).⁵²

Figure 5. Victim Outcome in Overdose Cases, Fiscal Years 2019–2023

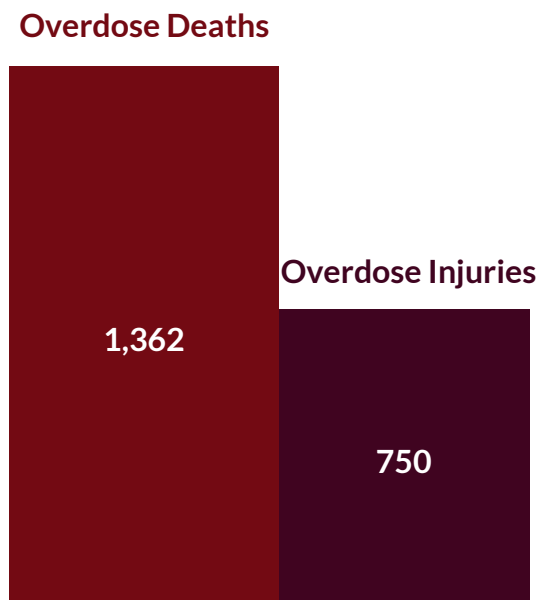
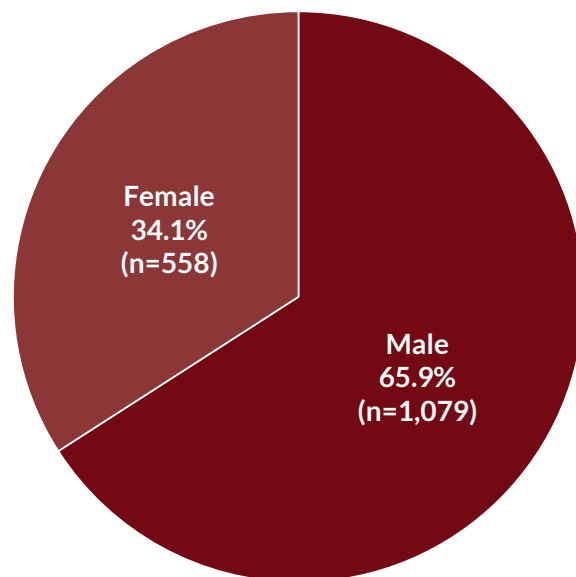


Figure 6. Gender of Overdose Victims, Fiscal Years 2019–2023

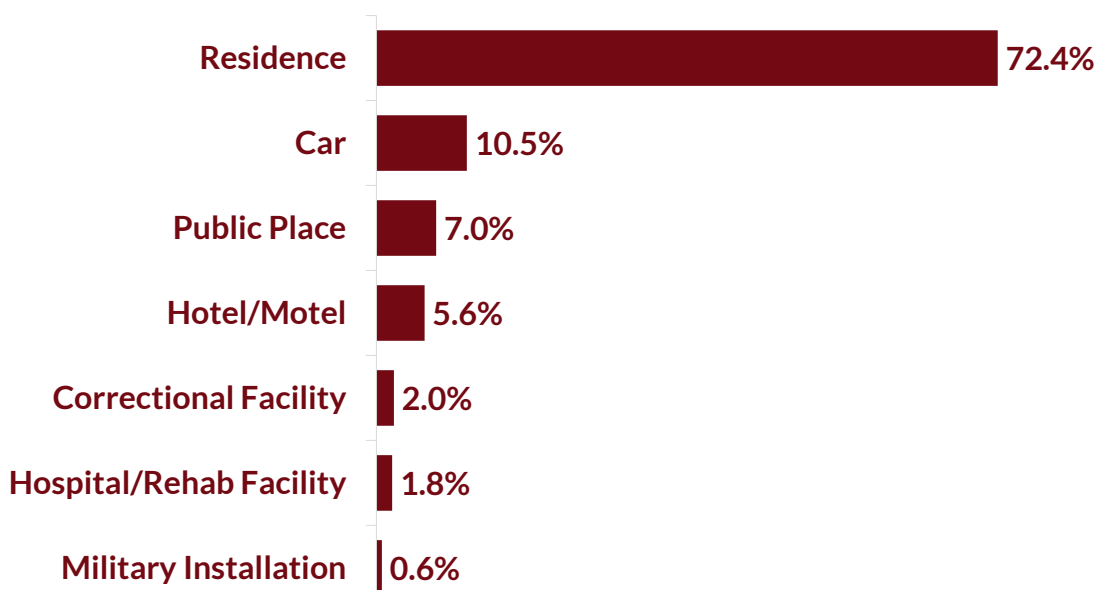


The victim's gender was missing in 22.5% of cases (n=475). These victims were excluded from the analysis of gender.

Nearly three-quarters (72.4%) of victims overdosed in a residence, such as a home or apartment (Figure 7). Approximately one in ten (10.5%) victims overdosed in a car. Only a small portion (7.0%) were in a public

place at the time of the overdose, such as a restaurant or store. Two percent of the overdoses occurred in a correctional facility (primarily local jails). No overdose occurred in a Federal Bureau of Prisons facility.

Figure 7. Location of Victim During Overdose Event, Fiscal Years 2019–2023⁵³



Information on the location of the overdose was missing for 32.6% of victims (n=689). These victims were excluded from this analysis.

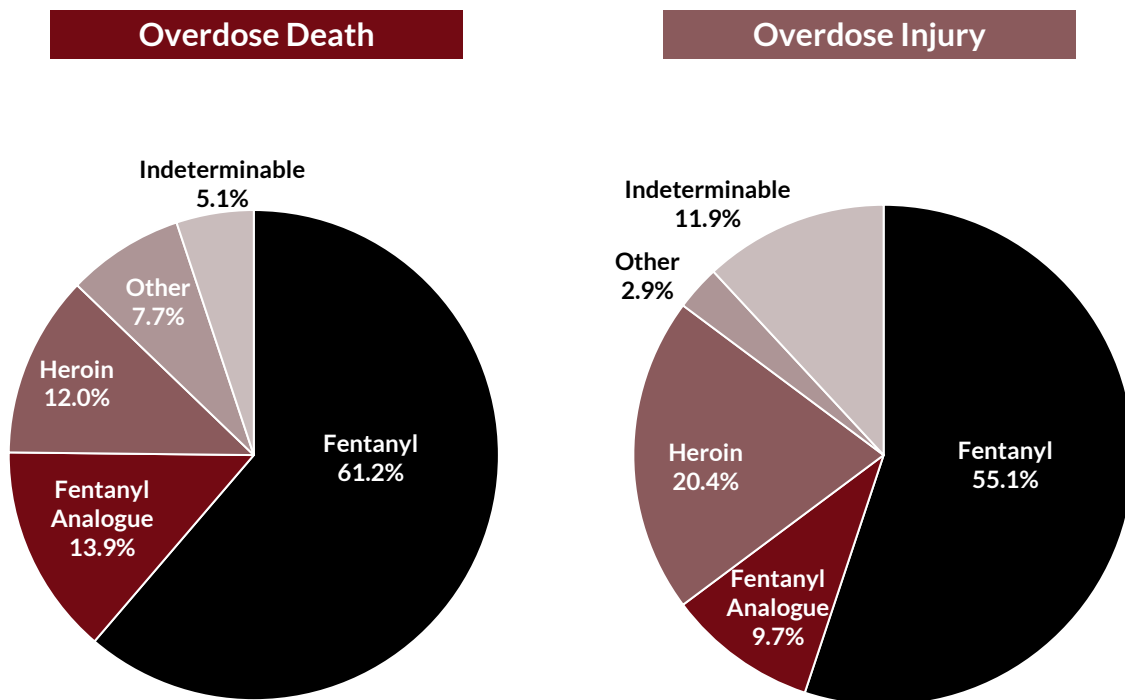
Drug Type and Misrepresentation

As discussed above, almost two-thirds (64.5%; n=1,362) of Overdose Cases involved a fatal overdose of at least one victim. Fentanyl was the drug most commonly involved in Overdose Cases regardless of the overdose outcome (Figure 8). Fentanyl and its analogues were involved in 75.1 percent of victim deaths from overdose and 64.8 percent of non-fatal overdoses. The next most common

drug type in Overdose Cases was heroin, which accounted for 12.0 percent of the overdoses resulting in death and 20.4 percent of the overdoses causing injury.

Fentanyl and fentanyl analogues can be misidentified as other powders, including heroin, oxycodone, or cocaine, by the individuals selling and purchasing the drugs. To assess the extent to which the misidentification of a drug might have contributed to the overdose in a case, the Commission collected information, when available, about what the persons involved in the offense knew about the drugs that were being sold.

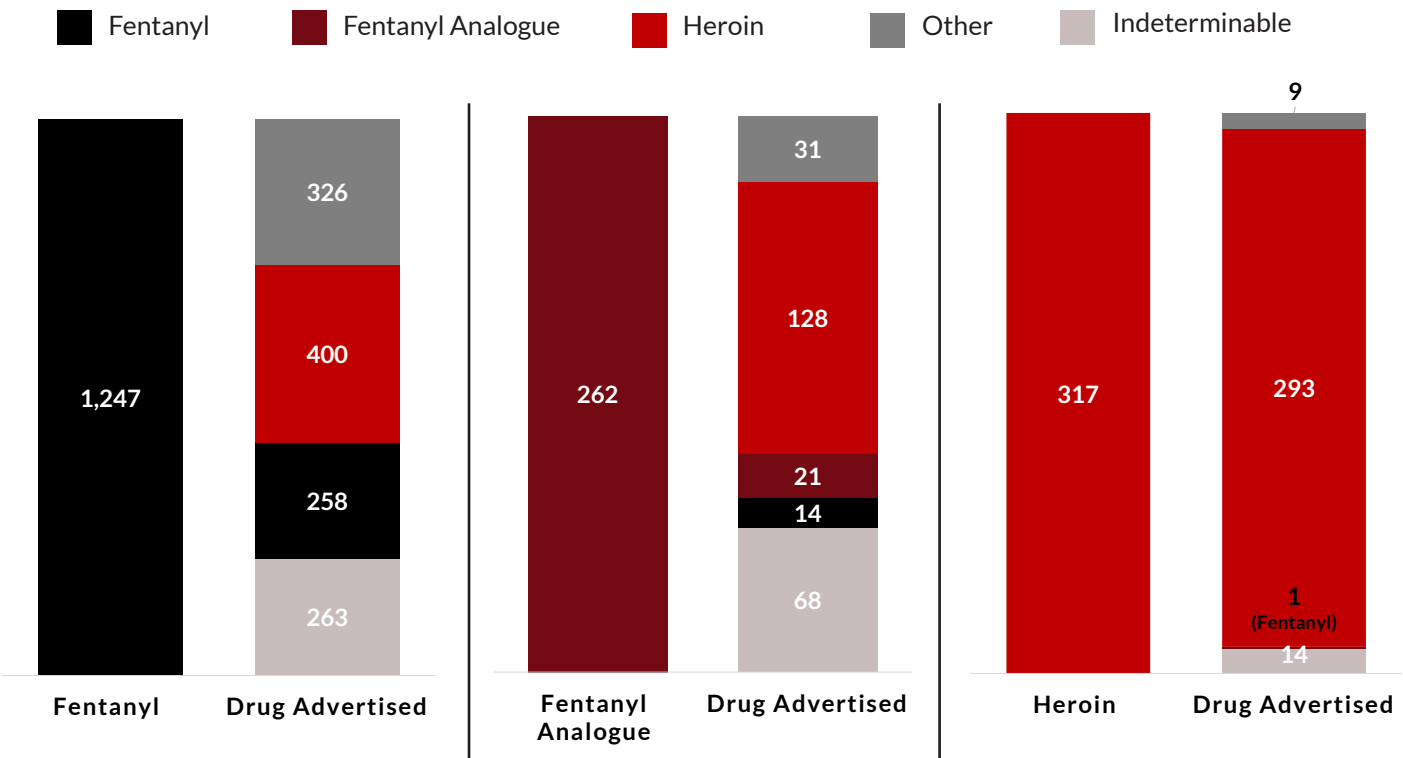
Figure 8. Drug Type by Overdose Outcome, Fiscal Years 2019–2023



The information presented in the PSRs submitted to the Commission demonstrated that in most cases both victims and the persons who sold the drugs to them were unaware of the exact drugs involved in a transaction.⁵⁴ The information in those PSRs also demonstrated that less than five percent of the individuals sentenced in an Overdose Case knowingly misrepresented the drug they were selling to at least one overdose victim (4.8%).⁵⁵ Figure 9 presents this information for the three major drug types involved in Overdose Cases. The solid bars represent the number of victims that overdosed on one of the three major drug types. To the right of each solid bar is the distribution of what drug the victim believed they received.

As discussed above, the most common overdose drug in this study was fentanyl, but sentencing documents indicated that only 258 (20.7%) of the 1,247 victims who overdosed on fentanyl knew they had received fentanyl.⁵⁷ Nearly a third (32.1%) of the victims who overdosed on fentanyl believed they had received heroin. Another sizeable portion of these victims believed they received oxycodone (15.4%) or cocaine (6.8%). Similarly, of the 262 victims who overdosed on a fentanyl analogue, only 21 (8.0%) believed they received a fentanyl analogue.⁵⁸ The majority of those who overdosed on a fentanyl analogue believed they received heroin (48.9%) with a much smaller proportion (7.3%) believing they were receiving cocaine. In contrast, most victims who overdosed on heroin (92.4%) believed they received heroin.⁵⁹

Figure 9. Drug Type Involved In Overdose vs. Drug Type the Victim Believed They Received, Fiscal Years 2019–2023⁵⁶

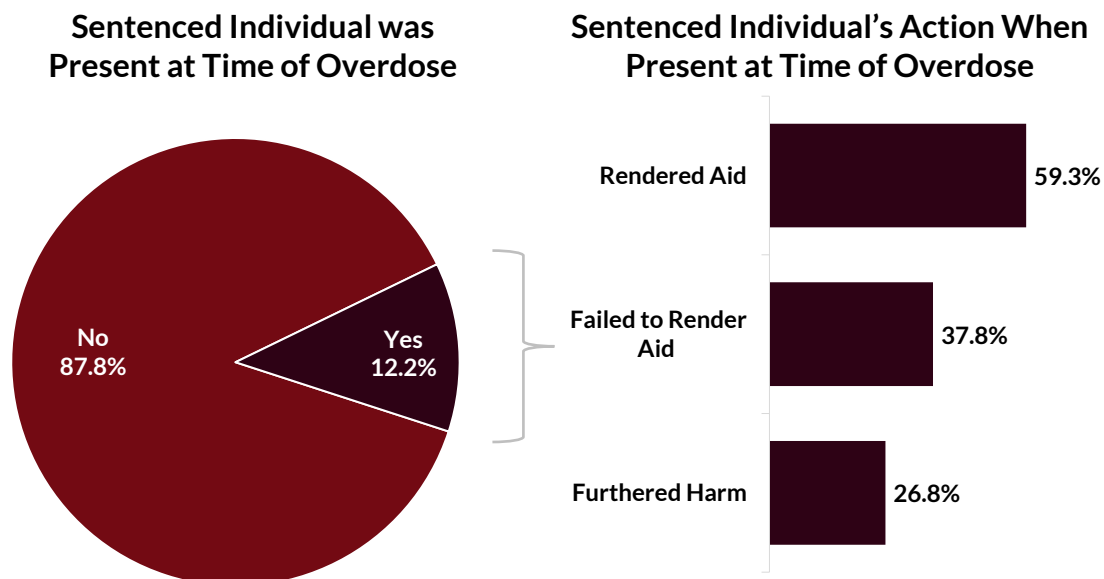


Sentenced Individual's Interaction with the Overdose Victim

The Commission also collected information on how the sentenced individuals in Overdose Cases interacted with overdose victims, beyond trafficking the drug to them. Approximately two-thirds of victims received the drug that was involved in the overdose directly from the sentenced individual (68.0%).⁶⁰ The other third (32.0%) of victims did not physically interact with the sentenced individual, but instead received the drugs from someone else.

Regardless of how they distributed the drug, approximately nine out of ten (87.8%) sentenced individuals in this study were not physically present with the overdose victim at the time of the overdose (Figure 10).⁶¹ The remaining 12.2 percent (n=160) were present at the time of at least one victim's overdose. When the sentenced individual's actions at the site of an overdose could be determined, the Commission found that more than half (59.3%; n=86) rendered aid to at least one victim,⁶² while just over a third (37.8%; n=56) failed to render aid (either taking no action or leaving the scene).⁶³ However, roughly one-quarter (26.8%; n=42) of individuals sentenced for these offenses furthered the harm to a victim by engaging in behaviors such as destroying evidence, moving the victim to a remote location, mutilating their bodies, or injecting them with additional drugs during the overdose.⁶⁴

Figure 10. Sentenced Individual Present at Time of Overdose, Fiscal Years 2019–2023



Information on the sentenced individual's presence at an overdose was indeterminable in 26 cases (1.9%). These sentenced individuals are excluded from this analysis.

The bars reflect a sentenced individual's interactions with a victim if the sentenced individual was present at an overdose. Sentenced individuals may have been present for the overdose of multiple victims, thereby engaging in multiple types of interactions with different victims, or may have engaged in multiple types of interactions with an individual victim. For these reasons, the sum of the percents of the bars will not sum to 100%.

Sentencing Overdose Drug Trafficking Individuals

Between fiscal years 2019 and 2023, 1,340 individuals were sentenced in an Overdose Case. The average sentence length imposed was 149 months. Nearly all of those individuals (98.4%) were sentenced to a term of imprisonment. While a similar percentage (96.6%) of persons sentenced in Non-Overdose Cases received an imprisonment sentence, the average sentence imposed in those cases was much lower, at 76 months.

Base Offense Levels⁶⁵

The base offense level (BOL) for most individuals sentenced for drug trafficking is determined using the Drug Quantity Table (DQT) in §2D1.1.⁶⁶ However, as discussed, in the largest group of Overdose Cases (52.8%; n=708), an alternate base offense level for an offense involving a death or serious bodily injury applied. Almost all of the cases with an alternate BOL involved a BOL of 38 (86.6%) or 43 (13.1%).

In the remaining Overdose Cases, the BOL was determined by the quantity of drugs involved in the case using the DQT at §2D1.1. In the 181 cases where the court

sentenced above the guideline range through a death or physical injury departure under either §5K2.1 or §5K2.2, or a variance for a similar reason, most (59.1%) involved a BOL below 24, which corresponds to a five-year statutory mandatory minimum penalty. The most common BOL applied in the Overdose – Departure/Variance Cases was 12 (35.4%).

In the remaining 451 Overdose – Conduct Cases, ones where an alternate BOL or a departure or variance was not applied, the BOLs were more evenly distributed. Almost 40 percent (39.0%) had a BOL below 24. Approximately 30 percent (29.5%) involved a BOL of 24 to 28. The remaining 31.5% had a BOL of at least 30, corresponding to a ten-year mandatory minimum penalty.

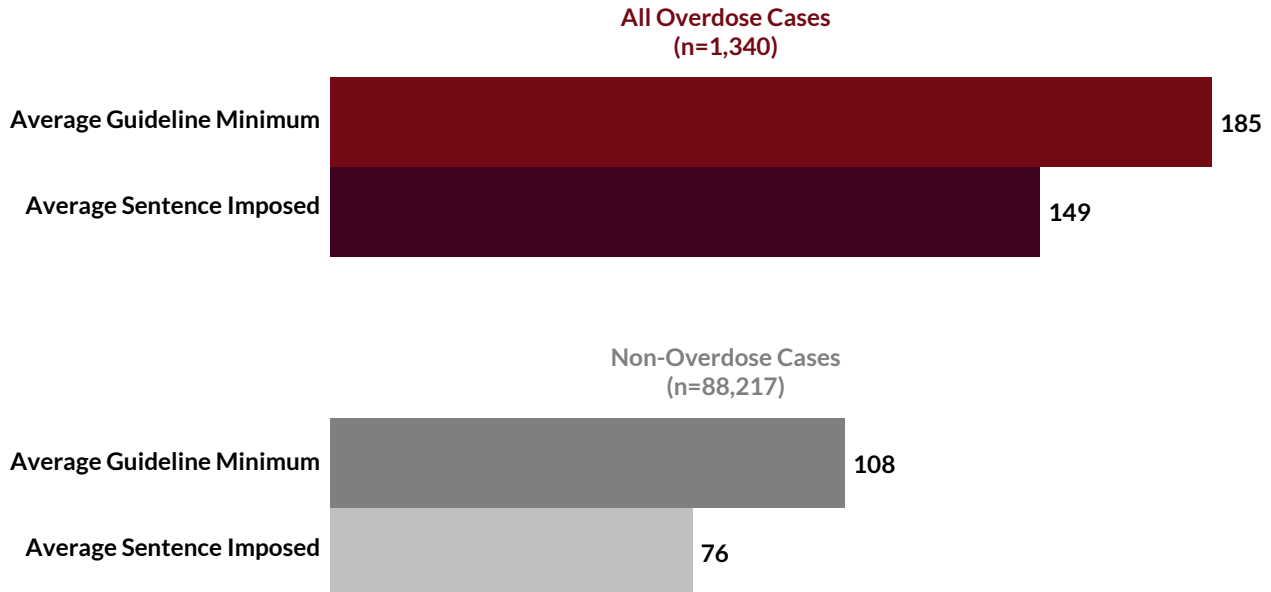
Non-Overdose Cases had comparably higher base offense levels than the Overdose Cases in which the BOL was established using the quantity of drugs in the case. Only 15 percent (14.8%) of Non-Overdose Cases involved a BOL below 24. More than half of these cases (59.7%) involved a BOL of 30 or higher. More than one in ten (12.8%) had the highest BOL on the DQT, a BOL of 38, corresponding to a guideline range of almost 20 years.

Guideline Minimum and Sentence Imposed

Despite the differing BOLs that applied in Overdose Cases, the average guideline minimum for all Overdose Cases was higher than in Non-Overdose Cases (Figure 11). Similarly, in Overdose Cases the average sentence imposed also was higher, at 149 months, almost twice as high as the 76 months in Non-Overdose cases.

Over the past five years, however, the guideline minimum in Overdose Cases has generally decreased, from an average of 203 months in fiscal year 2019 to 179 months in fiscal year 2023. During that same time, the average guideline minimum in Non-Overdose Cases increased slightly, from 103 months in fiscal year 2019 to 116 months in fiscal year 2023.

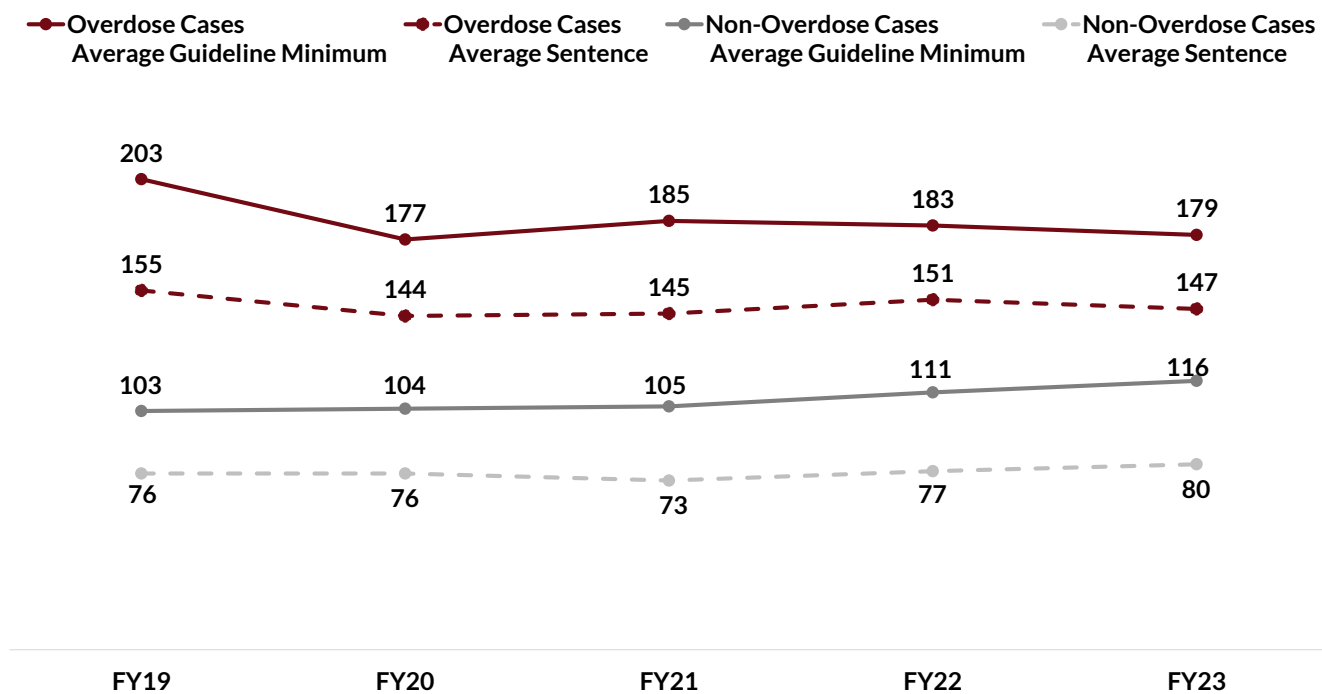
Figure 11. Average Guideline Minimum and Average Sentence Imposed in Overdose Cases and Non-Overdose Cases, Fiscal Years 2019–2023



As discussed above, along with higher average guideline minimums, Overdose Cases had higher average sentences compared to Non-Overdose Cases. Sentences in Overdose Cases were almost twice as long as sentences in Non-Overdose Cases throughout the five fiscal years.

Between fiscal years 2019 and 2023, the average sentence imposed in Overdose Cases ranged from 144 months to 155 months (Figure 12). During those same five fiscal years, the average sentence imposed in Non-Overdose Cases ranged from 73 months to 80 months.

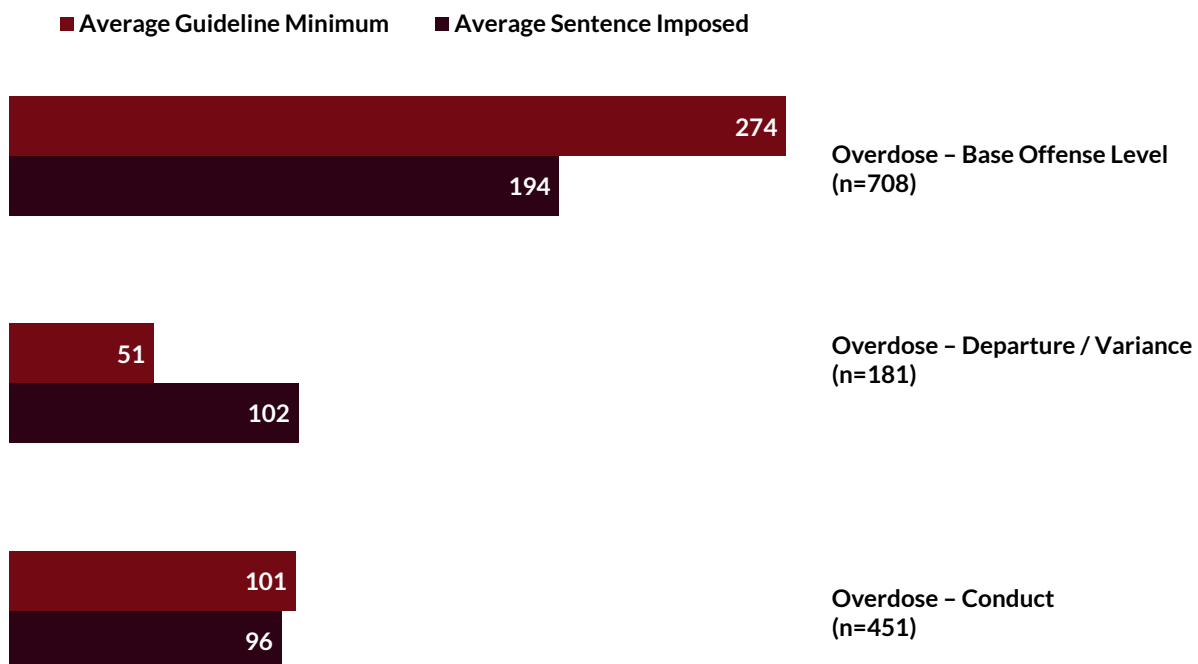
Figure 12. Average Guideline Minimum and Average Sentence Imposed in Overdose Cases and Non-Overdose Cases Over Time, Fiscal Years 2019–2023



The sentences imposed in Overdose Cases varied by the type of Overdose Case. Individuals in cases designated as Overdose – Base Offense Level had the longest sentences, at 194 months on average

(Figure 13). Individuals in cases designated as Overdose Cases through a departure or variance received an average sentence of 102 months, while individuals in Overdose – Conduct category had similar sentences imposed, at 96 months on average.

Figure 13. Average Sentence Imposed for Overdose and Non-Overdose Cases, Fiscal Years 2019–2023

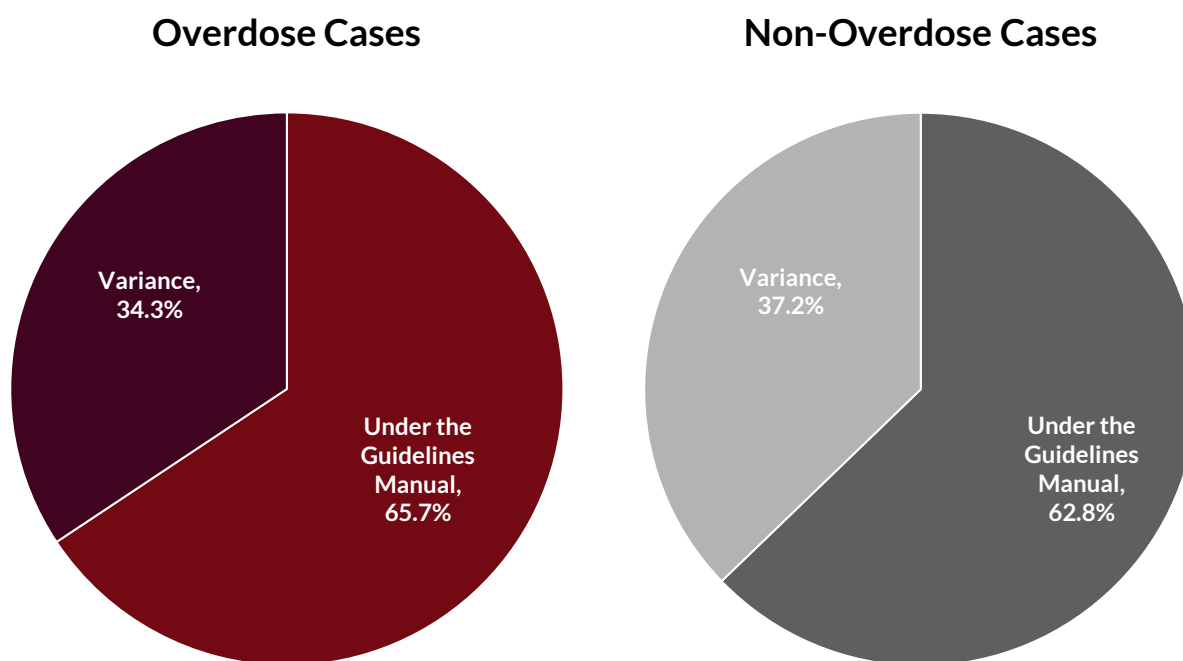


Sentence Imposed Relative to the Guideline Range

Despite these seeming differences in sentences, a similar proportion of individuals sentenced in Overdose and Non-Overdose Cases were sentenced under the *Guidelines Manual* (Figure 14). Approximately two-thirds (65.7%) of individuals sentenced in Overdose Cases were sentenced under the *Guidelines Manual* during the five-year study

period. In those cases, the court imposed a sentence that was within the guideline range or cited a departure provision in the *Guidelines Manual* as a reason for the sentence. A similar proportion of the individuals sentenced in Non-Overdose Cases (62.8%) were sentenced within the *Guidelines Manual*. Approximately one-third of the individuals in each group received a variance sentence, either above or below the guideline range.

Figure 14. Sentence Imposed Relative to the Guideline Range for Overdose and Non-Overdose Cases, Fiscal Years 2019–2023



Drug Mandatory Minimum Penalties⁶⁷

The frequency with which drug mandatory minimum penalties applied varied between Overdose and Non-Overdose Cases. On the whole, individuals sentenced for an Overdose Case were less likely to be convicted of an offense carrying a drug mandatory minimum penalty than

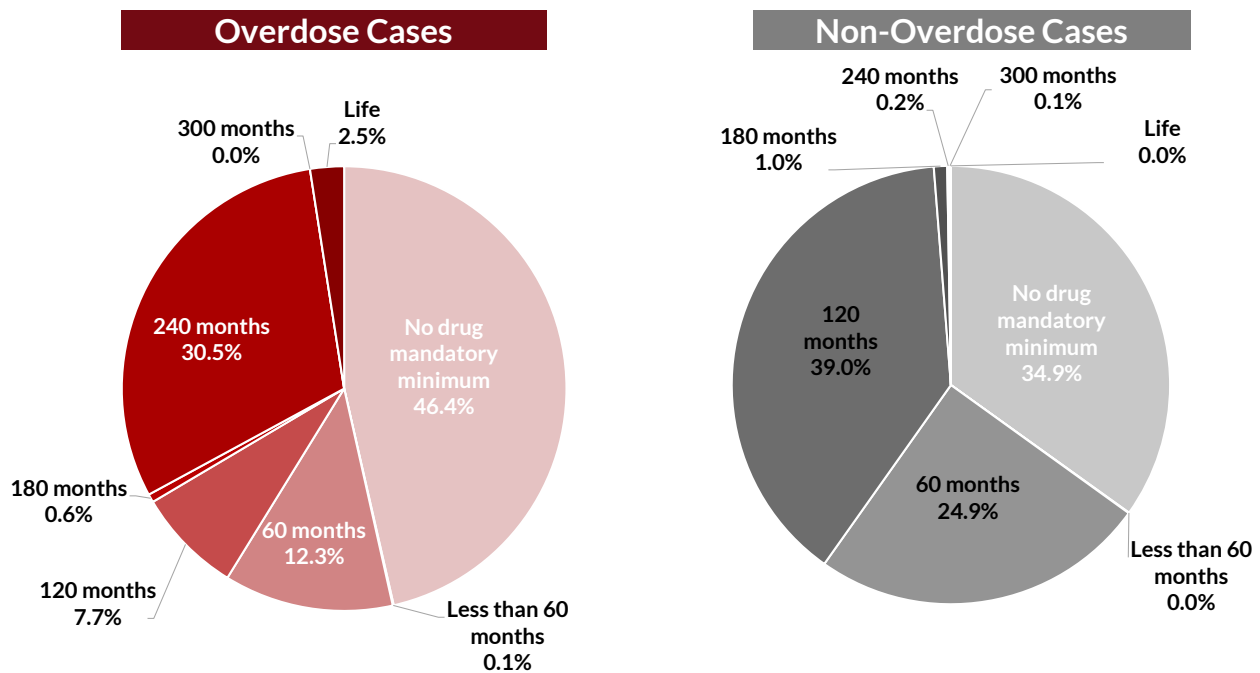
those convicted of drug trafficking when no overdose occurred (53.6% compared to 65.1%). This is because individuals in Overdose Cases were less likely to have a quantity of the drug type involved in the case that could trigger a statutory mandatory minimum penalty than individuals in Non-Overdose Cases. As discussed above, 59.1 percent of Overdose – Departure/Variance cases and 39.0 percent of Overdose – Conduct Cases involved a BOL of less than

24, which corresponds to the five-year statutory mandatory minimum penalty. On the other hand, most (85.2%) individuals in Non-Overdose Cases were sentenced under a BOL that was high enough to correspond to a mandatory minimum penalty (i.e., a BOL of at least 24).

When mandatory minimum penalties did apply, they differed between Overdose and Non-Overdose Cases (Figure 15). Two-thirds (63.9%) of individuals sentenced in Non-Overdose Cases were convicted of an offense carrying either a 60-month or 120-month mandatory minimum. This is consistent with the penalty structure

under 21 U.S.C. § 841(b)(1)(A) and 21 U.S.C. § 841(b)(1)(B) as discussed in the Legal Background section. However, individuals sentenced in Overdose Cases faced different mandatory minimum penalties, largely due to the differing penalty structure tied to the alternate BOLs at §2D1.1(a)(1)–(a)(2). These BOLs typically apply in cases where a mandatory minimum penalty of either 240 months or life imprisonment applies, which is why more individuals sentenced in Overdose Cases were sentenced under a mandatory minimum penalty of 240 months or life compared to Non-Overdose Cases (30.5% and 2.5% compared to 0.2% and 0.0%, respectively).

Figure 15. Drug Mandatory Minimum Penalties in Overdose and Non-Overdose Cases, Fiscal Years 2019–2023



Sentenced individuals convicted of a mandatory minimum penalty under 21 U.S.C. § 860a, 21 U.S.C. § 865 or with an otherwise unusual drug mandatory minimum were excluded from this analysis (n=26, all Non-Overdose Cases).

There were some demographic differences and differences in criminal history among the individuals sentenced in Overdose Cases, when these cases are examined based on the length of the mandatory minimum penalty that applied for the drug trafficking offense (Table 5). Black individuals were more likely to have been convicted of an offense carrying a mandatory minimum penalty than other individuals. This was most pronounced in cases where a mandatory penalty of life imprisonment was required because the offense involved a death or serious bodily injury, and the sentenced individual had

qualifying prior criminal history. In those cases, Black individuals accounted for 66.7 percent of all persons sentenced. As would be expected, the criminal history of all persons sentenced to that punishment was higher than that for persons sentenced to a lesser mandatory minimum penalty or in cases where no such penalty applied. When the mandatory minimum penalty that applied was 240 months, for cases where death or serious bodily injury occurred but where the sentenced individual did not have qualifying prior criminal history, White individuals accounted for 49.8 percent of all persons sentenced.

Table 5. Demographic Characteristics and Criminal History of Individuals Sentenced in Overdose Cases by Mandatory Minimum Penalty Status, Fiscal Years 2019–2023

	No Mandatory Minimum Penalty	Other Mandatory Minimum Penalty*	240 Month Mandatory Minimum Penalty	Life Mandatory Minimum Penalty
Male	83.4%	86.6%	80.2%	97.0%
White	47.7%	36.8%	49.8%	18.2%
Black	35.9%	41.9%	38.7%	66.7%
Hispanic	12.9%	18.4%	9.4%	15.2%
Other	3.4%	2.9%	2.2%	0.0%
U.S. Citizen	98.4%	95.0%	97.8%	100.0%
H.S. Graduate	42.8%	46.4%	47.1%	43.8%
Average Age	36	35	36	39
Average CHC	III	III	III	V
Average CH Points	6	6	6	13

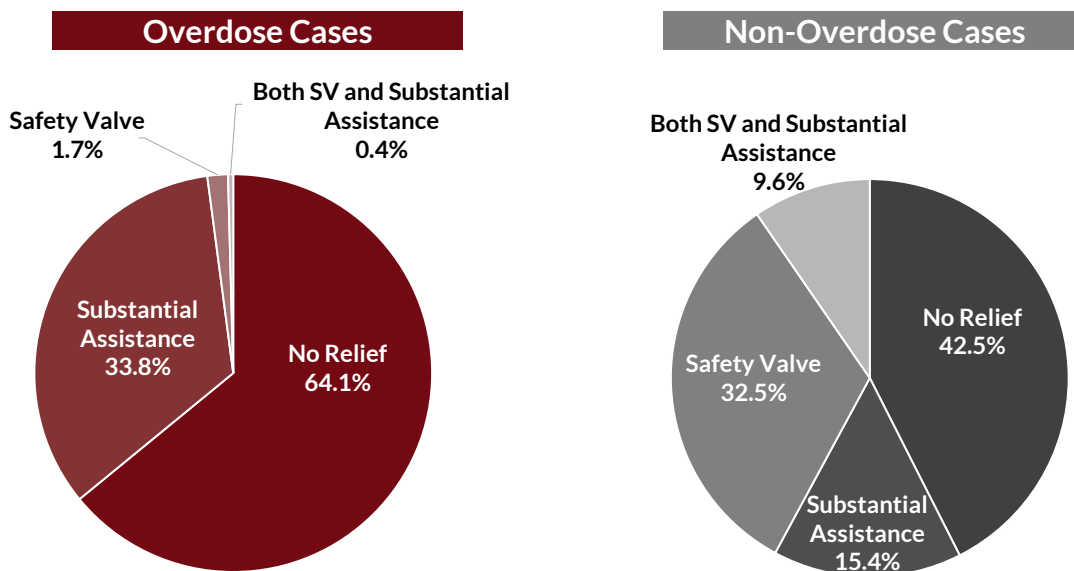
**This category includes 1 individual with a drug mandatory minimum of less than 60 months, 165 individuals with a mandatory minimum of 60 months, 103 individuals with a mandatory minimum of 120 months, and 8 individuals with a mandatory minimum of 180 months.*

Relief from Mandatory Minimum Penalties

There were also differences in the rates and types of relief that sentenced individuals obtained from a drug mandatory minimum penalty in Overdose Cases versus Non-Overdose Cases (Figure 16).⁶⁸ Just over a third (35.9%) of those sentenced for an overdose who had been convicted of an offense carrying a mandatory minimum penalty obtained relief from that penalty at sentencing, compared to 57.5 percent of individuals sentenced in a Non-Overdose Case.

This is largely because the occurrence of a death or bodily injury in connection with the offense generally precludes individuals sentenced for an overdose from receiving the benefit of the statutory safety valve.⁶⁹ This leaves substantial assistance relief as the only means of relief available for individuals sentenced in cases where an overdose occurred.⁷⁰ Thus, almost all the individuals sentenced in an Overdose Case who received relief did so by providing substantial assistance to the government in the investigation or prosecution of another person. By comparison, most of the individuals in the Non-Overdose group who received relief obtained it through the safety valve provision.

Figure 16. Relief from Drug Mandatory Minimum Penalties in Overdose and Non-Overdose Cases, Fiscal Years 2019–2023



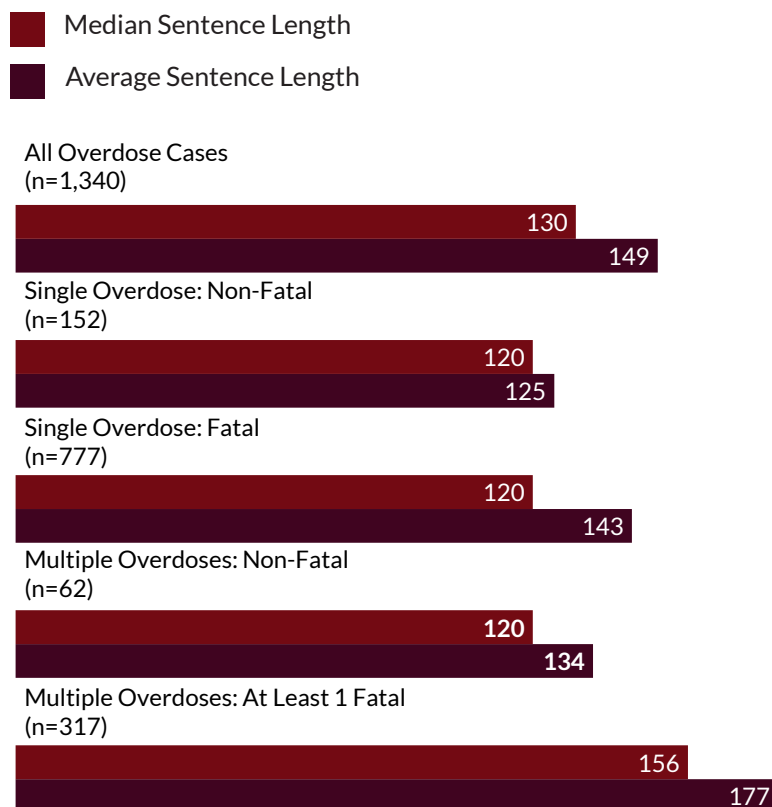
Sentenced individuals convicted of a mandatory minimum penalty under 21 U.S.C. § 860a, 21 U.S.C. § 865 or with an otherwise unusual drug mandatory minimum were excluded from this analysis (n=26, all Non-Overdose Cases).

Sentencing Outcomes Based on Offense and Individual Characteristics

The Commission further examined Overdose Cases to assess whether the result of the overdose (e.g., death) or the sentenced individual's conduct surrounding the overdose impacted the sentence imposed. The Commission found that courts imposed longer sentences in cases with more significant harm. As a baseline for comparison, the average sentence imposed on all individuals sentenced in Overdose

Cases was 149 months. However, when the offense involved a single non-fatal overdose, the average sentence imposed was 125 months (Figure 17). In cases where the single overdose victim died, the average sentence was 143 months. The highest average sentences imposed (177 months) were in Overdose Cases that involved multiple overdoses and where at least one overdose victim died.

Figure 17. Overdose Outcome and Sentence Length, Fiscal Years 2019–2023



Similarly, courts imposed longer sentences on individuals sentenced in Overdose Cases who failed to render aid (Figure 18) or furthered harm to an overdose victim (Figure 19). The average sentence imposed on individuals who were present during an overdose and rendered aid to a victim was 143 months. Sentences were similar when the individual failed to render aid but no death occurred. However, when

the sentenced individual failed to render aid and one or more overdose victims died, the average sentence increased to 210 months.

Sentences also varied based on whether the sentenced individual furthered the harm to an overdose victim who died. The average sentence imposed was 216 months for individuals who were present at the time of an overdose and furthered the harm to a victim who died.

Figure 18. Sentenced Individual's Interaction with Overdose Victim and Sentence Length – Rendering Aid to the Victim, Fiscal Years 2019–2023

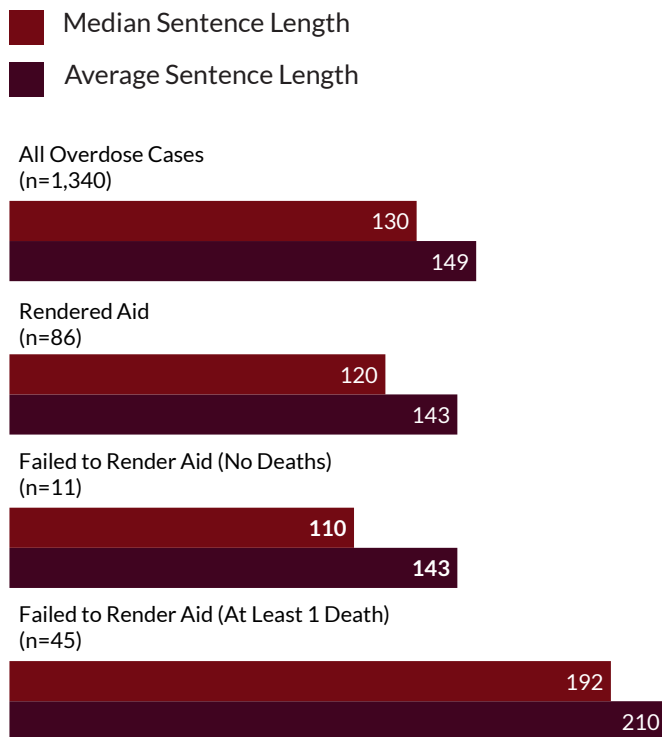
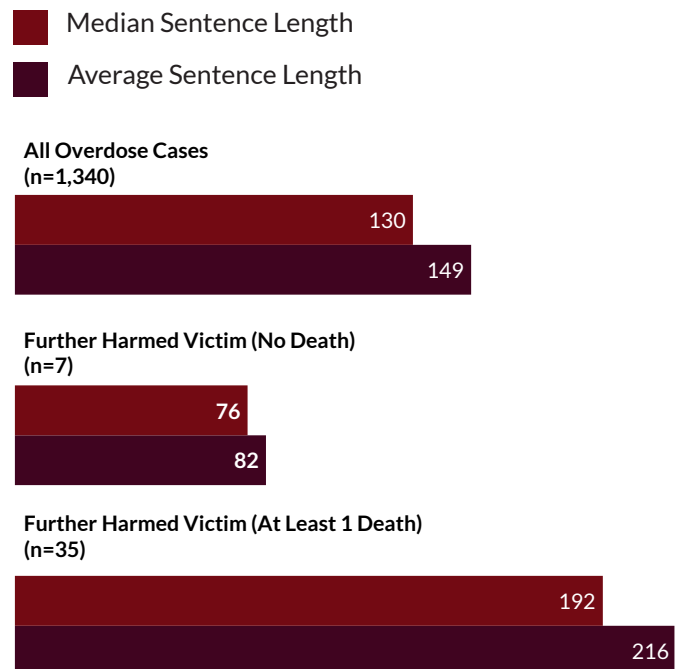


Figure 19. Sentenced Individual's Interaction with Overdose Victim and Sentence Length – Further Harm To Victim, Fiscal Years 2019–2023⁷¹



Drug types also carry different penalty structures and therefore may impact the sentences imposed in drug trafficking offenses.⁷² Among the three most common drugs involved in Overdose Cases, courts imposed the longest average sentences in cases where a sentenced individual trafficked a fentanyl analogue to at least one overdose victim (157 months) (Figure 20). The average sentence imposed in cases where heroin was

the drug involved with the overdose (150 months) was almost identical to the average sentence in cases where fentanyl was the drug involved in the overdose (149 months). These sentences were roughly double the average sentences of Non-Overdose Cases involving fentanyl (59 months), fentanyl analogue (80 months), and heroin (62 months) during the same five fiscal years (Figure 21).

Figure 20. Drug Type and Sentence Length in Overdose Cases, Fiscal Years 2019–2023

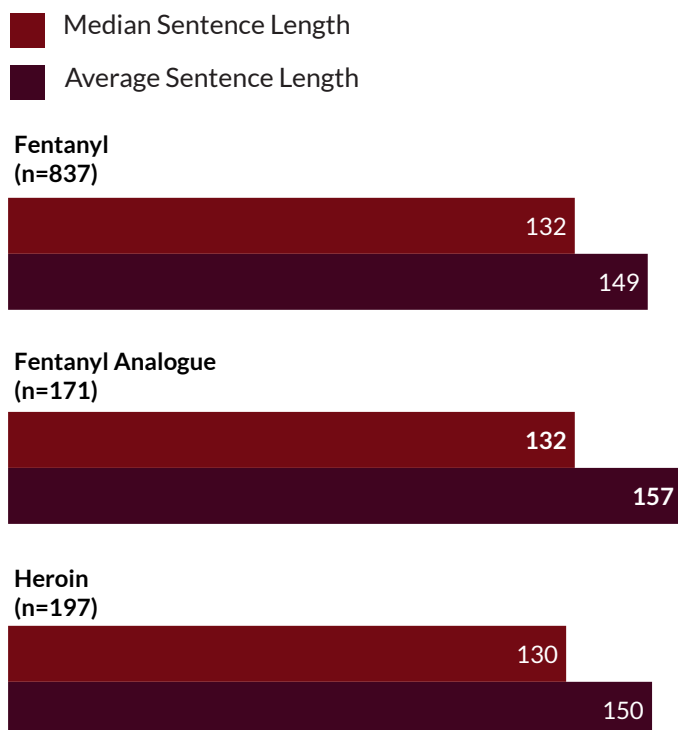
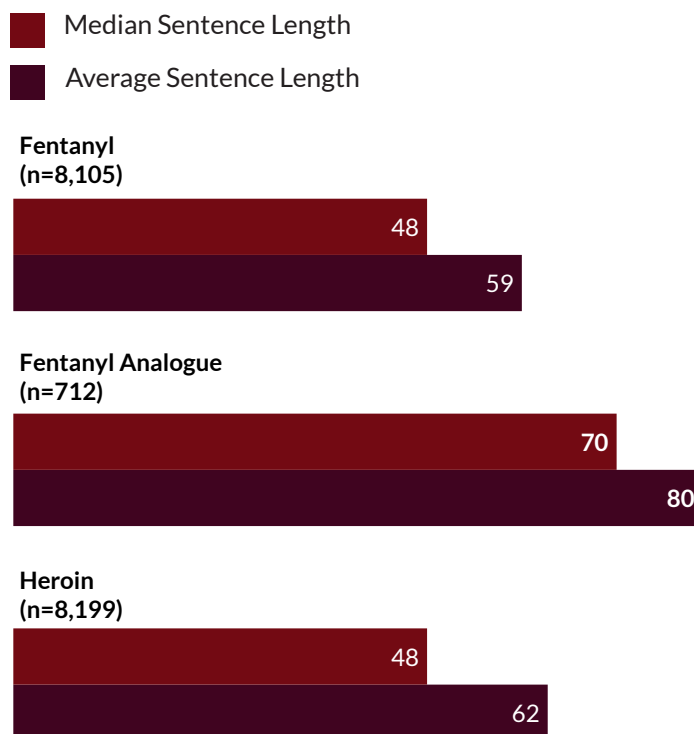


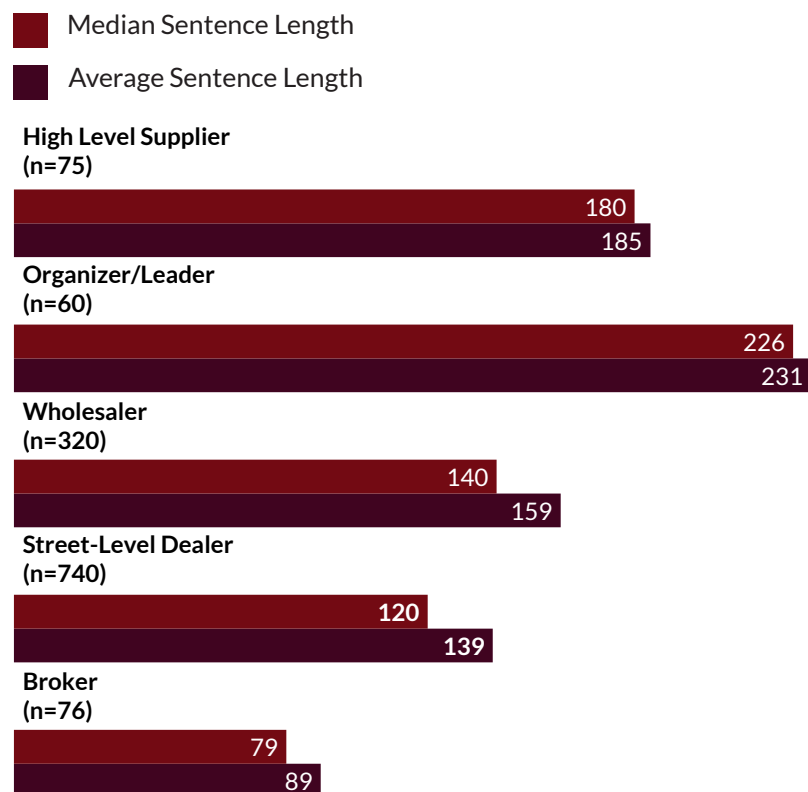
Figure 21. Drug Type and Sentence Length in Non-Overdose Cases, Fiscal Years 2019–2023



Previous Commission research has shown that sentenced individuals who perform leadership or managerial functions generally receive higher average sentences compared to individuals who performed lower-level functions.⁷³ Consistent with prior Commission research, although High Level Suppliers are classified as the most serious function, those individuals received shorter sentences when compared to

organizers and leaders (Figure 22).⁷⁴ Among individuals sentenced for Overdose Cases, the sentences, on average, were highest for the following functions: organizer and leader (231 months) and high-level supplier (185 months). The next longest sentences were imposed on persons who performed the function of wholesaler (159 months), street level dealer (139 months), and broker (89 months), respectively.⁷⁵

Figure 22. Function Performed and Sentence Length in Overdose Cases, Fiscal Years 2019–2023



Conclusion

Drug overdoses described in federal drug trafficking cases are serious and often fatal yet are relatively rare among federal drug trafficking offenses. Overdoses were reported in 1.5 percent of all §2D1.1 offenses sentenced between fiscal years 2019 and 2023. Two of these opioids—fentanyl and fentanyl analogues—were involved in nearly 80 percent of the 1,340 federal drug trafficking offenses sentenced between fiscal years 2019 and 2023 where an overdose was reported.

Federal courts imposed sentences that were almost twice as long in cases where the offense conduct involved an overdose (149 months) than those where the drug trafficking did not lead to an overdose (76 months). Although mandatory minimum penalties applied less frequently in Overdose

Cases, when they did apply they often were longer than those that applied in Non-Overdose Cases. Mandatory minimum penalties of 240 months or life imprisonment applied in one-third of all Overdose Cases but in less than one percent of Non-Overdose Cases.

Courts imposed longer sentences in cases where an overdose resulted in the death of a victim than those not involving a non-fatal overdose. Courts also increased sentences based on the sentenced individual's interaction with an overdose victim. Individuals who failed to render aid to an overdose victim or furthered the harm done to an overdose victim received the longest sentences among all Overdose Cases.

Appendix A

Appendix A Table lists commonly trafficked controlled substances, including fentanyl, fentanyl analogues, and heroin which were the most frequently occurring substances involved in the offenses covered in this report, and the quantity thresholds triggering the five- and ten-year mandatory minimums.

Appendix A Table. Quantity Thresholds Triggering Mandatory Minimum Penalties for Common Controlled Substances under 21 U.S.C. §§ 841(b)(1)(B) and 960(b)(1)

Controlled Substance	5 Year Minimum	10 Year Minimum
Heroin	100 g	1 kg
Cocaine	500 g	5 kg
Cocaine base	28 g	280 g
Methamphetamine (actual)	5 g	50 g
Methamphetamine (mixture)	50 g	500 g
Fentanyl	40 g	400 g
Fentanyl analogue	10 g	100 g
Marijuana	100 kg	1,000 kg

Appendix B

Appendix B Table provides a distribution of the number and type of victims by each type of Overdose Case (Base Offense Level, Departure/Variance, and Conduct).⁷⁶ A victim died in 82 of the 93 cases (88.2%) where the BOL was 43. The highest number of victims in those cases was four. In 11 of the BOL 43 cases no victim died. In those 11 cases, the number of victims ranged from one to four.

Similarly, in 545 of the 613 cases (88.9%) where the individual was sentenced using a BOL of 38, at least one victim died. In the remaining 68 cases no victim died. The number of victims in BOL 38 cases, for those involving death ranged from one to 11 and for those involving injury, ranged from one to six.

In 79.0 percent of Overdose-Departure/Variance Cases, a fatal overdose occurred. The number of victims in Overdose-Departure/Variance Cases ranged from one to four in cases with at least one death and from one to six in cases where no victim died.

In the 451 Overdose – Conduct Cases, a victim died in 78.5 percent of the cases. The number of deaths ranged from one to eight. In the 97 cases where no overdose death occurred, the number of victims ranged from one to 11.

Appendix B Table. Number of Overdose Victims by Type of Overdose Drug Trafficking Offense

	Number	Average	Maximum
BOL 43	93		
# involving death	82	1	4
# involving injury	11	2	4
BOL 38	613		
# involving death	545	1	11
# involving injury	68	2	6
Departures/Variances	181		
# involving death	143	1	4
# involving injury	38	1	6
OD - Conduct	451		
# involving death	354	1	8
# involving injury	97	1	11

Endnotes

The Commission acknowledges the work of Dr. Kristin M. Tennyson, former Deputy Director of the Office of Research and Data, and Research Associates Melissa K. Reimer and Tessa Guiton in preparing this report.

1 According to data reported by the Centers for Disease Control and Prevention, 782,771 people died from an overdose between 2014 and 2023. See MATTHEW F. GARNETT & ARIALDI M. MININO, NAT'L CTR. FOR HEALTH STAT., CTRS. FOR DISEASE CONTROL & PREVENTION, *DRUG OVERDOSE DEATHS IN THE UNITED STATES, 2003-2023* (2024), 2003-2023, at 9 (2024).

2 In 2003, the number of overdose deaths was 25,785. *Id.*

3 *Id.*; Nat'l Ctr. for Health Stat., Ctrs. for Disease Control & Prevention, *Provisional Drug Overdose Deaths Counts*, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (last visited Feb. 5, 2025).

4 NAT'L CENTER FOR HEALTH STAT., CTRS. FOR DISEASE CONTROL & PREVENTION, *Provisional Drug Overdose Deaths Counts*, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (last visited February 5, 2025) (the predicted number of deaths for the 12-month period ending August 2024 was 89,740).

5 MERIANNE R. SPENCER ET AL., NAT'L CTR. FOR HEALTH STAT., CTRS. FOR DISEASE CONTROL & PREVENTION, *DRUG OVERDOSE DEATHS IN THE UNITED STATES 2002-2022* (2024).

6 MERIANNE ROSE SPENCER ET AL., NAT'L CTR. FOR HEALTH STAT., CTRS. FOR DISEASE CONTROL & PREVENTION, *ESTIMATES OF DRUG OVERDOSE DEATHS INVOLVING FENTANYL, METHAMPHETAMINE, COCAINE, HEROIN, AND OXYCODONE: UNITED STATES, 2021* (2023).

7 Ctrs. for Disease Control & Prevention, *Fentanyl Facts* (Apr. 2, 2024), <https://www.cdc.gov/stop-overdose/caring/fentanyl-facts.html>.

8 The Commission collects information for every federal felony and Class A misdemeanor offense sentenced each year. Sentencing courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in a criminal case, including (1) the charging document; (2) the plea agreement; (3) the Presentence Report; (4) the Judgment and Commitment Order; and (5) the Statement of Reasons form. See 28 U.S.C. § 994(w)(1). For each case in its Individual Datafile, the Commission routinely collects case identifiers, sentencing data, demographic variables, statutory information, the complete range of court guideline application decisions, and departure and variance information from these documents.

9 21 U.S.C. §§ 841(a), 960(a).

10 See *id.* §§ 841(b), 960(b). The statutory scheme provides ranges of 0-20 years, 5-40 years, and 10 years to life.

11 *Id.* §§ 841(b)(1)(B), 960(b)(2).

12 See Appendix A for a list of commonly trafficked controlled substances and the quantity thresholds triggering the five-and ten-year mandatory minimums.

13 See 21 U.S.C. §§ 841(b)(1), 960(b).

14 See *id.* §§ 841(b)(1)(A)–(C), 960(b)(1)–(3). “Serious bodily injury” is defined as a “bodily injury which involves—(A) a substantial risk of death; (B) protracted and obvious disfigurement; or (C) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.” See *id.* § 802(25).

15 See *id.* §§ 841(b)(1)(E), 960(b)(5).

16 See *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (“Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.”).

17 In *Burrage v. United States*, the Supreme Court held that the 20-year mandatory minimum penalty provision of section 841(b)(1)(C) for death or serious bodily injury does not apply when the use of such a substance “contributes to, but is not a but-for cause of, [a] victim’s death or injury.” 571 U.S. 204, 206, 218–19 (2014) (explaining that “at least where use of the drug distributed by the defendant is not an independently sufficient cause of the victim’s death or serious bodily injury, a defendant cannot be liable under the penalty enhancement provision of 21 U.S.C. § 841(b)(1)(C) unless such use is a but-for cause of the death or injury”).

18 A “felony drug offense” is defined as “an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances.” 21 U.S.C. § 802(44).

19 Section 401 of the First Step Act changed the types of offenses required to trigger the enhanced statutory penalties for prior convictions at sections 841 and 960. Pub. L. No. 115–391, § 401, 132 Stat. 5194, 5220. A “serious drug felony” is defined as an offense described in 18 U.S.C. § 924(e)(2)(A) for which the individual served a term of imprisonment of more than 12 months and was released from any term of imprisonment within 15 years of the instant offense. *Id.* Section 924(e)(2)(A) defines “serious drug offense” as an offense under the Controlled Substances Act (21 U.S.C. §§ 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. §§ 951 et seq.), chapter 705 of title 46 (Maritime Law Enforcement), or under State law, involving manufacturing, distributing, or possessing with intent to distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. § 802)), for which a maximum term of imprisonment is ten years or more. 18 U.S.C. § 924(e)(2)(A).

20 A “serious violent felony” is defined as an offense for which the individual served a term of imprisonment of more than 12 months that is either a violation of 18 U.S.C. § 3559(c)(2) or 18 U.S.C. § 113 (Assaults within maritime or territorial jurisdiction), if the offense was committed in the maritime or territorial jurisdiction of the United States. First Step Act § 401. Section 3559(c)(2)(F) defines “serious violent felony” to include a list of a number of enumerated offenses (including, among other offenses, murder, certain sex offenses, kidnapping, extortion, arson, and certain firearms offenses), or as any other offense “that has as an element the use, attempted use, or threatened use of physical force against the person of another or that, by its nature, involves a substantial

risk that physical force against the person of another may be used in the course of committing the offense” and is punishable by a maximum term of imprisonment of ten years or more. 18 U.S.C. § 3559(c)(2)(F). Section 113 prohibits a range of assault offenses occurring within maritime or territorial jurisdictions. *Id.* § 113.

21 Similar penalties are provided for violations of section 960(b).

22 See 21 U.S.C. §§ 841(b)(1)(A)–(C), 960(b)(1)–(3).

23 U.S. SENT’G COMM’N, GUIDELINES MANUAL App. A (Nov. 2024)[hereinafter USSG].

24 USSG §2D1.1(a)(1)–(4).

25 See USSG §2D1.1(a)(2); see also USSG Ch.5, Pt.A.

26 See USSG §2D1.1(a)(1); see also USSG Ch.5, Pt.A.

27 See 21 U.S.C. §§ 841(b)(1)(A)–(C), 960(b)(1)–(3).

28 Pub. L. No. 115–391, § 401, 132 Stat. 5194, 5220–21. The First Step Act reduced the 20-year mandatory minimum penalty for individuals with one prior qualifying offense to 15 years and the life mandatory minimum penalty for two or more prior qualifying offenses to 25 years. *Id.* Additionally, the First Step Act changed the types of offenses triggering the reduced mandatory minimum penalties. See *supra* notes 19–20. For a detailed analysis of the statutory changes made by the First Step Act, see JULIE ZIBULSKY & CHRISTINE KITCHENS, U.S. SENT’G COMM’N, THE FIRST STEP ACT OF 2018: ONE YEAR OF IMPLEMENTATION 7–9 (2020). Commission materials cited herein are available on the Commission’s website at www.ussc.gov.

29 See USSG App. C, amend. 817 (effective Nov. 1, 2023).

30 See Amendment 5 of the amendments submitted by the Commission to Congress on April 30, 2024, 89 FR 36853 (May 3, 2024). The amendment became effective on November 1, 2024. USSG App. C, amend. 830 (effective Nov. 1, 2024).

31 *Id.*

32 USSG §5K2.1; see, e.g., *United States v. McCray*, 7 F.4th 40, 47–49 (2d Cir. 2021) (district court properly departed under §5K2.1 based on relevant conduct of fentanyl trafficking resulting in death).

33 See USSG §5K2.2.

34 See USSG §5K2.1.

35 See USSG §5K2.2; see also *United States v. Gillispie*, 929 F.3d 788, 789–90 (6th Cir. 2019) (affirming upward departure where the individual intended or knowingly risked injury to the victim by supplying him with fentanyl).

36 See 18 U.S.C. § 3553(a)(1); USSG §1B1.1, comment. (backg’d.).

37 USSG §2D1.1. Only cases with complete guideline information were included in this study.

38 *See supra* note 8.

39 If an overdose occurred but was clearly not related to the individual sentenced or the instant drug trafficking offense, the case reverted to Non-Overdose Case status.

40 This number excludes 1,364 drug trafficking cases with incomplete guideline information.

41 In 284 of the 451 Overdose – Conduct Cases, there was no information available in the documentation received by the Commission to explain why an alternate BOL or a death or injury departure or variance was not applied. In the remaining 167 Overdose – Conduct Cases, PSR documentation indicated that an alternate BOL or a death or injury departure or variance was not applied due to an agreement between the parties as part of a plea, for evidentiary reasons, or because the overdose was only indirectly tied to the sentenced individual or was the result of a larger drug conspiracy.

42 The Southern District of California (n=7,172), Western District of Texas (n=4,985), Southern District of Texas (n=4,354), Northern District of Texas (3,341), and the District of Arizona (n=2,615) made up the top five districts for Non-Overdose Cases.

43 Information on drug type was missing in 5.2% of Overdose Cases (n=70). Those cases were excluded from this analysis.

44 When more than one controlled substance is involved in the offense, a Drug Conversion Table in that guideline is used to provide a single converted drug weight for the substances in the offense, which then establishes the BOL. *See* USSG §2D1.1(c)(Note K); USSG §2D1.1, comment. (n.8(D)).

45 *See* U.S. SENT’G COMM’N, 2023 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS app. A, at 177–78 (2024). The substance with the highest converted drug weight produces the highest base offense level.

46 The Commission reviewed sentencing documentation to identify the drug that was involved in the overdose. In most cases, the information was obtained from either a coroner or lab report, or similar documentation. *See supra* note 17 and accompanying text. If more than one overdose occurred in a case but involved different drugs, the Commission classified the drug type for the case based on the following ranking: fentanyl analogue, fentanyl, heroin, and all other drugs. Similarly, if the substance involved in the overdose was a drug mixture, the Commission assigned the drug type for that case based on the following ranking of the drugs in the mixture: fentanyl analogue, fentanyl, heroin, and all other drugs.

47 Information on whether the sentenced individual used the same drug as the overdose victim was missing in 2.4% of cases (n=32). These cases were excluded from this analysis.

48 The Commission assessed the most serious function a sentenced individual performed during an offense independent of any application of sentencing enhancements and reductions. In those cases where an individual performed different functions at different times, the Commission determined the most serious function performed in the drug offense, even if the individual more frequently performed a less serious function.

49 See, e.g., KRISTIN M. TENNYSON, MELISSA K. REIMER, TESSA GUITON & CHARLES S. RAY, U.S. SENT’G COMM’N, METHAMPHETAMINE TRAFFICKING OFFENSES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 36 & 60 n.117 (2024) [hereinafter METHAMPHETAMINE REPORT]; KRISTIN M. TENNYSON, CHARLES S. RAY & KEVIN T. MAAS, U.S. SENT’G COMM’N, FENTANYL AND FENTANYL ANALOGUES: FEDERAL TRENDS AND TRAFFICKING PATTERNS 27–29 (2021) [hereinafter FENTANYL REPORT]; U.S. SENT’G COMM’N, MANDATORY MINIMUM PENALTIES FOR FEDERAL DRUG OFFENSES 43–51 (2017) [hereinafter 2017 DRUG MANDATORY MINIMUM REPORT]; U.S. SENT’G COMM’N, MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM ch. 8, at 165–73 (2011) [hereinafter 2011 MANDATORY MINIMUM REPORT].

50 In previous Commission reports, Importer was included within the function of High-Level Supplier. In this report it has been separated into its own function.

51 For 15 cases in this study the number of victims injured was indeterminable. In one case, information on whether the victim died from the overdose was indeterminable. For an additional 16 cases, both the number of victims injured and the number of victims who died was indeterminable. These cases were excluded from this analysis.

52 The victim’s gender was missing for 475 overdose victims (22.5%). These victims were excluded from the analysis of gender. Other salient demographic information on overdose victims, such as age or race, was infrequently present in the sentencing documents and is not reported in this study.

53 Information on the location of the overdose was missing for 34.2% of victims (n=722). These victims were excluded from this analysis.

54 This happens, for example, when the toxicology result of a fatal or non-fatal overdose shows the victim overdosed on a particular drug, but documented conversations between the person selling the drug and the victim indicate they both believed the drug was different than what testing later identified it to be.

55 The Commission was unable to determine whether the sentenced individual misrepresented the drug they were selling to any victim in 5.2% of Overdose Cases (n=70). Those sentenced individuals were excluded from this analysis.

56 This analysis is limited to cases where the drug type in the overdose was fentanyl, fentanyl analogue, or heroin. There were too few cases involving any other drug type for meaningful analysis.

57 The drug type that the victim believed they received could not be determined for 263 victims who overdosed on fentanyl (21.1%). However, these individuals remain in the analysis.

58 The drug type that the victim believed they received could not be determined for 68 victims who overdosed on an analogue of fentanyl (26.0%). However, these individuals remain in the analysis.

59 The drug type that the victim believed they received could not be determined for 14 victims who overdosed on heroin (4.4%). However, these individuals remain in the analysis.

60 The person who distributed to the victim could not be determined definitively for 144 victims (6.8%). These victims are excluded from this analysis.

61 Information on the sentenced individual's presence at an overdose was indeterminable in 26 cases (1.9%). These cases are excluded from this analysis.

62 Sentenced individuals rendered aid through various means, such as giving victims NARCAN, administering CPR, or calling 911.

63 Information on whether the sentenced individual rendered aid or failed to render aid was missing in 9.4% (n=15) and 7.5% (n=12) of cases when the sentenced individual was present at an overdose, respectively. These cases are excluded from this analysis.

64 Information on whether the sentenced individual caused further harm to the victim was missing in 1.9% (n=3) of cases when the sentenced individual was present at an overdose. These cases are excluded from this analysis.

65 Base offense level values reflect the BOL from the DQT at §2D1.1(c) prior to the application of the mitigating role cap in §2D1.1(a)(5). Individuals missing information required to determine the BOL prior to the application of the mitigating role cap were excluded from the BOL analysis. Drug amounts associated with various BOLs have changed over time, so not all individuals in each BOL category will have the same drug amount ranges.

66 USSG §2D1.1(c).

67 Sentenced individuals convicted of a mandatory minimum penalty under 21 U.S.C. §§ 860a, 865 or with an otherwise unusual drug mandatory minimum were excluded from this analysis (n=26, all Non-Overdose Cases).

68 Sentenced individuals may obtain relief from a drug mandatory minimum penalty, including a recidivist enhancement, in one of two ways. First, if the government files a motion for such relief based on the defendant's "substantial assistance" to authorities in the investigation or prosecution of another person, a sentencing court may impose a sentence below any statutory minimum penalty that would otherwise apply. 18 U.S.C. § 3553(e). Second, if the defendant meets the criteria of the "safety valve" provision of federal law, the court is required to impose a sentence without regard to any otherwise applicable statutory minimum penalty. *Id.* § 3553(f).

69 *Id.* § 3553(f)(3).

70 See USSG §2D1.1(a)(1)–(a)(4). All 12 of the individuals in this study sentenced in an Overdose Case who received relief from a drug mandatory minimum penalty through the safety valve were in the Overdose – Departure/Variance or Overdose – Conduct categories.

71 The category of "further harmed victim" includes behaviors such as destroying evidence, moving the victim to a remote location, mutilating their bodies, or injecting them with additional drugs during the overdose. See *supra* note 64 and accompanying text.

72 METHAMPHETAMINE REPORT, *supra* note 49, at 13–15; FENTANYL REPORT, *supra* note 49, at 10–12.

73 2017 DRUG MANDATORY MINIMUM REPORT, *supra* note 49, at 51 ("When comparing . . . functions to each of other, the data continue to show that higher culpability [individuals] generally receive higher sentences than lower culpability [individuals]."); 2011 MANDATORY MINIMUM REPORT, *supra* note 49, at ch. 8, at 172 ("[Sentenced individuals] performing lower-level functions received significantly shorter sentences than [sentenced individuals] performing higher-level functions.").

74 *See supra* note 73.

75 Figure 22 focuses on the most prevalent functions in this study.

76 Each case had at least one overdose victim. Cases with both a death and an injury were classified as a death case. Those with only injuries were classified as an injury case. Of the 1,340 cases, two Overdose – BOL Cases with BOLs of 26 or 30 were excluded from the table. Of the 354 Overdose – Conduct Cases involving death, 17 were excluded from the average and maximum number of victims analysis due to an unclear number of victims. Of the 97 Overdose – Conduct Cases involving only an injury, one case was excluded from the average and maximum number of victims analysis due to an unclear number of victims.



United States Sentencing Commission

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