

## §2D2.3

### Commentary

**Statutory Provision:** 21 U.S.C. § 844(a). For additional statutory provision(s), *see* Appendix A (Statutory Index).

**Background:** Mandatory (statutory) minimum penalties for several categories of cases, ranging from fifteen days' to three years' imprisonment, are set forth in 21 U.S.C. § 844(a). When a mandatory minimum penalty exceeds the guideline range, the mandatory minimum becomes the guideline sentence. *See* §5G1.1(b). Note, however, that 18 U.S.C. § 3553(f) provides an exception to the applicability of mandatory minimum sentences in certain cases. *See* §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases).

<i>Historical Note</i>	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 24); November 1, 1989 (amendment 304); November 1, 1990 (amendment 321); November 1, 1992 (amendment 447); September 23, 1994 (amendment 509); November 1, 1995 (amendment 514); November 1, 1997 (amendments 556 and 558); November 1, 2010 (amendments 746 and 748); November 1, 2011 (amendment 750); November 1, 2025 (amendment 836).
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### §2D2.2. Acquiring a Controlled Substance by Forgery, Fraud, Deception, or Subterfuge; Attempt or Conspiracy

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- (a) Base Offense Level: 8

### Commentary

**Statutory Provision:** 21 U.S.C. § 843(a)(3).

<i>Historical Note</i>	Effective November 1, 1987. Amended effective November 1, 1992 (amendment 447).
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### §2D2.3. Operating or Directing the Operation of a Common Carrier Under the Influence of Alcohol or Drugs

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- (a) Base Offense Level (Apply the greatest):

- (1) **26**, if death resulted; or
- (2) **21**, if serious bodily injury resulted; or
- (3) **13**, otherwise.

- (b) Special Instruction:

- (1) If the defendant is convicted of a single count involving the death or serious bodily injury of more than one person, apply Chapter Three,