

# Kansas Federal Public Defender BLOG

## USSC report shows methamphetamine purity no longer a proxy for culpability

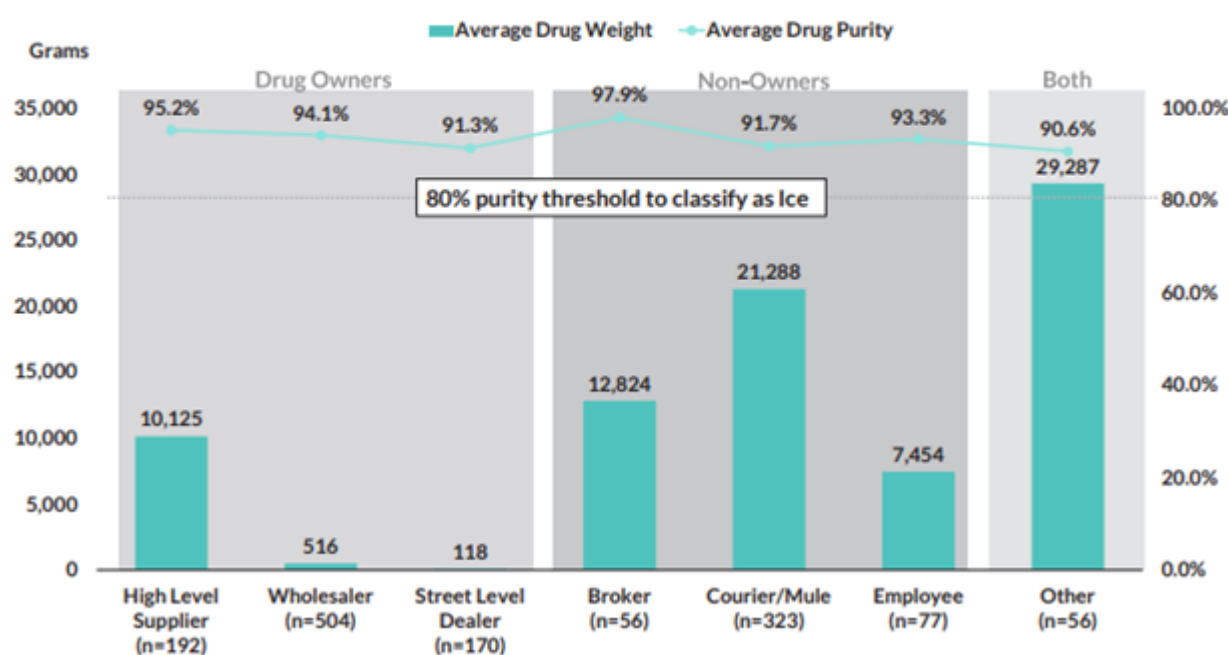
Submitted by Kirk Redmond on Tuesday, September 24, 2024 - 09:28.

We've been arguing for years that the ice and actual methamphetamine guidelines over-punish our clients. We have a new ally in the fight; the United States Sentencing Commission.

The Commission's [June 2024 report on methamphetamine sentencing](#) explains that Congress established higher penalties for actual methamphetamine than methamphetamine mixture in 1988 because, at the time, "individuals sentenced for trafficking highly pure methamphetamine were considered to have a higher function in a drug distribution chain, and therefore greater culpability in the offense." Report at 3. The assumption was that because "controlled substances are often diluted and combined with other substances as they pass down the chain of distribution, the fact that a defendant is in possession of unusually pure narcotics may indicate a prominent role in the criminal enterprise," justifying a heavier punishment. USSG § 2D1.1, Application Note 27(C).

But the days of domestic methamphetamine lab operators [smurfing](#) pseudoephedrine to cook low-purity methamphetamine are long over. Now, "nearly all methamphetamine in the United States is imported from Mexico," where it is manufactured in "super laboratories capable of producing multiple kilogram quantities of highly pure methamphetamine." Report at 35, 11. Previously, "individuals trafficking highly pure methamphetamine have been presumed to be higher up in the chain of distribution." *Id.* at 39. That assumption no longer holds. In the Commission's study, "there were no statistically significant differences in the purity of methamphetamine base on the function of the individual drug trafficker." *Id.*

Figure 23. Average Drug Quantity Seized and Average Drug Purity by Function Performed, Fiscal Year 2022



*Id.* The Commission's data demonstrates that purity is no longer a proxy for culpability.

Seeing the same evidence, "courts have expressed growing policy disagreements with the methamphetamine guideline penalties." *Id.* at 52. Those courts agree on three things. First, there is no empirical basis for the Sentencing Commission's harsh treatment of offenses involving actual or ice methamphetamine. **Second**, methamphetamine purity is no longer an accurate indicator of a defendant's role in a drug-trafficking conspiracy and creates unwarranted

disparity between defendants sentenced based on purity and defendants sentenced under the mixture guideline. **Third**, the singularly severe purity methamphetamine guideline creates unwarranted sentencing disparities between purity-based methamphetamine offenses and offenses involving other drugs. Start your reading with *United States v. Robinson*, 2022 WL 17904534 (S.D. Miss. 2022) (authored by Hon. Carlton Reeves, Chair of the United States Sentencing Commission); *United States v. Johnson*, 379 F. Supp. 3d 1213, 1223-24 (M.D. Ala. 2019); and *United States v. Bean*, 371 F.Supp.3d 46 (D. N.H. 2019).

We're making progress against the pernicious and punitive purity-based guidelines for methamphetamine offenses. And we now have the Commission's research in our corner. Keep raising these challenges.