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# **New US Atty Policies**

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The Holder Memos

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# Holder Memo

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- ❑ Change in policy for “non-violent, low level drug offenders”
  - ❑ It’s (partly) about money
  - ❑ Limitations on filing mandatory minimums
    - ❑ very narrow criteria, but
    - ❑ suggested advocating below-guideline sentence
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# Holder Memo on 851's

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“Prosecutor’s should decline to file [an 851] unless the defendant is involved in conduct that makes the case appropriate for severe sanctions.”

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# Significant Criminal History

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“While a significant criminal history is normally evidenced by three or more criminal history points, that is **not a mechanical test**. A criminal history involving three or more points may not be significant for purposes of the policy if, for example, a conviction is **remote in time, aberrational, or for conduct that itself represents non-violent, low-level drug activity.**”

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# Holder: Retroactivity

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- ❑ Applies to cases not yet resolved
  - ❑ Applies to those convicted but not yet sentenced
    - ❑ within the AUSA discretion, but
    - ❑ encouraged to apply where  
**‘legally and practically feasible’**, and
  - ❑ Does not apply to cases already sentenced.
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# Pled but not sentenced

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- ❑ plead to superseding charge with no quantity, then the prosecution dismisses the original indictment, or
  - ❑ the prosecution may move to dismiss the allegation of the 'enhancement fact', leaving the lesser-included offense intact.
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# 851: Pled but not sentenced

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In cases where the 851 was filed,  
prosecutors are encouraged to withdraw  
the  
motion prior to sentencing.

Same with conviction at jury trial.

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Offense level with acceptance	<b>25</b>	57-71	63-78	70-87	84-105	100-125	110-137
	<b>26</b>	63-78	70-87	78-97	92-115	110-137	120-150
	<b>27</b>	70-87	78-97	87-108	100-125	120-150	130-162
Base offense level 4 kilos cocaine, w/o acceptance	<b>28</b>	78-97	87-108	97-121	110-137	130-162	140-175
	<b>29</b>	87-108	97-121	108-135	121-151	140-175	151-188
	<b>30</b>	97-121	108-135	121-151	135-168	151-188	168-210
	<b>31</b>	108-135	121-151	135-168	151-188	168-210	188-235
	<b>32</b>	121-151	135-168	151-188	168-210	188-235	210-262







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District of Kansas

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# Cooperation

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- ❑ 25%, 40%, and 50%, or more
  - ❑ charge bargaining
  - ❑ starting point
  - ❑ blind plea
  - ❑ (almost) always debrief
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# Mandatory Minimums and 851's

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- ❑ 851 not used as a threat
  - ❑ 851: not for remote priors, probation, simple possession
  - ❑ MM: again, more judicious use. Just because it is available does not mean it should be filed
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