

Federal Enhancements: Consequences of a Conviction¹

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Weapons Charge and Weapons Sentence Enhancements

It is unlawful for a person to ship or transport in interstate or foreign commerce, or to possess in interstate or foreign commerce, or to affect interstate or foreign commerce by such possession, a firearm or ammunition or to receive such a firearm if the person has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, 18 U.S.C. §922(g)(1), or convicted in any court of a misdemeanor crime of domestic violence. 18 U.S.C. §922(g)(9).

Violation of §922(g) is punishable by 10 years imprisonment and a fine. However, a person convicted of violation of §922(g) is subject to a penalty of not less than 15 years (an Armed Career Criminal sentence) if the person has three previous convictions by any court punishable by a sentence exceeding one year for a violent felony or a serious drug offense or both committed at different times. 18 U.S.C. §924(e)(1).

Among the serious drug offenses defined in the statute is an offence under state law involving distribution and possession with intent to distribute a controlled substance for which a maximum term of imprisonment of 10 years or more is

1. A search has disclosed the enhancements set out herein. There may be others. The statutes listed are not quoted in their entirety.

prescribed. 18U.S.C.§924(e)(2)(A)(ii).

A violent felony is defined as a crime punishable by a term exceeding one year in prison or any act of juvenile delinquency involving the use or carrying of a firearm, knife or destructive device that would be punishable for a term exceeding one year if committed by an adult, that has as an element the use, attempted, or threatened use of force against another person or is a burglary, arson or extortion involving conduct that creates a serious potential risk of physical injury to another. 18 U.S.C.§924(e)(1)(B)(i)and(ii).

The term conviction includes a finding of juvenile delinquency involving a violent felony. 18 U.S.C.§924(e)(1)(C).

Sexually Explicit Material Sentence Enhancements

Any interstate or foreign transport or transfer of a visual depiction of a minor engaging in sexually explicit conduct or receipt or distribution of such visual duplication, 18 U.S.C.§2252(a)(1)-(4), is punishable by not more than 15 years in prison, 18 U.S.C. §2252(b)(1) (relating to crimes defined in subsections 18 U.S.C.§2252(a)(1)-(3)) or 5 years in prison, 18 U.S.C. §2252(b)(2) (relating to crimes defined in §2252(a)(4)). If, however, the defendant has a prior conviction under the laws of any state relating to aggravated sexual abuse, sexual abuse, or abusive sexual

conduct involving a minor or any activity involving pornography, the terms of imprisonment are from 5 to 30 years for crimes defined in 18 U.S.C. §2252(a)(1)-(3) and 2 to 10 years for crimes defined in §2252(a)(4). 18 U.S.C. §2252(b)(1) and (2).

Illegal Reentry Sentence Enhancements

An alien who has been excluded, deported, denied entry or removed or who has departed from the United States while an order requiring departure is pending and who enters or attempts reentry into the United States without consent (if it was needed) can be imprisoned for two years. 8 U.S.C. §1326(a).

If the removal² was after a conviction for three or more misdemeanors involving drugs or crimes against the person or a felony, the sentence is up to 10 years in prison. 8 U.S.C. §1326(b)(1). If the prior conviction is for an aggravated felony, the term of imprisonment is up to 20 years. 8 U.S.C. §1326(b)(2).

Drug Sentence Enhancement

It is unlawful to knowingly or intentionally manufacture, distribute or dispense or to possess with intent to do such acts a controlled substance. 21 U.S.C. §841(a).

Depending on the classification and the amount of the substance involved in the

2. The cases appear to assume that removal includes the other forms of departure.

illegal act, the statute sets a term of imprisonment which is increased if the defendant has a prior final drug felony conviction.³

	Term of Years	Enhanced Term
§841(b)(1)(A)	10 to life	20 years to life (1 prior felony) Life (2 prior felonies)
§841(b)(1)(B)	5 to 40 years	10 years to life
§841(b)(1)(C)	not more than 20 years	up to 30 years
§841(b)(1)(D)	not more than 5 years	up to 20 years
§841(b)(1)(D)(2)	1 year	up to 6 years

Those convicted of a violation of 21 U.S.C. §849 (drug distribution at a truck stop), §859 (drug distribution to people under 21), §860 (drug distribution near schools and colleges), and §861 (use of persons under 18 years old in drug operations) shall receive life terms if previously convicted of two final prior drug convictions.

3. The term of post release suspension is also increased by a prior conviction.

