

WHAT EVERY STATE COURT  
CRIMINAL PRACTITIONER NEEDS TO  
KNOW ABOUT THE FEDERAL  
SYSTEM

The ABCs of the Federal Sentencing Guidelines

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### *Guideline Sentencing Article*

Defending a Federal Criminal Case, 2010 Edition, Volume II, pp. 17-818 to 17-1836, *Federal Sentencing* by Amy Baron Evans, Anne E. Blanchard, Denise C. Barrett, Paul J. Hofer, Jennifer Niles Coffin, Sara E. Silva, Kristen Garment Rogers, David Chan Hemingway, Janet G. Hinton, Alan Dubois, Stephen C. Gordon, Henry J. Bemporad, Bradford W. Bogan, and Vidalia V. Patterson

**18 U.S.C. § 922(g). Unlawful acts involving firearms**

**(g)** It shall be unlawful for any person--

**(1)** who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

**(2)** who is a fugitive from justice;

**(3)** who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act ([21 U.S.C. 802](#)));

**(4)** who has been adjudicated as a mental defective or who has been committed to a mental institution;

**(5)** who, being an alien--

**(A)** is illegally or unlawfully in the United States; or

**(B)** except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act ([8 U.S.C. 1101\(a\)\(26\)](#)));

**(6)** who has been discharged from the Armed Forces under dishonorable conditions;

**(7)** who, having been a citizen of the United States, has renounced his citizenship;

**(8)** who is subject to a court order that--

**(A)** was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

**(B)** restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

**(C)(i)** includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

**(ii)** by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

**(9)** who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

## **18 U.S.C. §§ 921(a)(2) & (3). Definitions**

**(2)** The term “interstate or foreign commerce” includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

**(3)** The term “firearm” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

## **18 U.S.C. § 921(17)(A). Definitions**

**(17)(A)** The term “ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

## **18 U.S.C. § 922(a)(20). Definitions**

**(20)** The term “crime punishable by imprisonment for a term exceeding one year” does not include--

**(A)** any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

**(B)** any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

## **18 U.S.C. § 921(33)(A). Definition**

**(A)** Except as provided in subparagraph (C), [\[FN2\]](#) the term “misdemeanor crime of domestic violence” means an offense that--

**(i)** is a misdemeanor under Federal, State, or Tribal [\[FN3\]](#) law; and

**(ii)** has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim

**(B)(i)** A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless--

**(I)** the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

**(II)** in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

**(aa)** the case was tried by a jury, or

**(bb)** the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

**(ii)** A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

## **18 U.S.C. § 924(a)(2). Penalties**

**(2)** Whoever knowingly violates [subsection \(a\)\(6\)](#), [\(d\)](#), [\(g\)](#), [\(h\)](#), [\(i\)](#), [\(j\)](#), or [\(o\) of section 922](#) shall be fined as provided in this title, imprisoned not more than 10 years, or both.

**18 U.S.C. § 924(e)(1). [“Armed Career Criminal Act”]**

**(e)(1)** In the case of a person who violates [section 922\(g\)](#) of this title and has three previous convictions by any court referred to in [section 922\(g\)\(1\)](#) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under [section 922\(g\)](#).

**(2)** As used in this subsection--

**(A)** the term “serious drug offense” means--

**(i)** 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.](#)), or chapter 705 of title 46, for which a maximum term of imprisonment of ten years or more is prescribed by law; or

**(ii)** an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or 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 of ten years or more is prescribed by law;

**(B)** the term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use

or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that--

**(i)** has as an element the use, attempted use, or threatened use of physical force against the person of another; or

**(ii)** is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

**(C)** the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

**18 U.S.C. § 924(c). [Use, carry or possession of a firearm during or in relation to or furtherance of any crime of violence or drug trafficking crime]**

**(c)(1)(A)** Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime--

**(i)** be sentenced to a term of imprisonment of not less than 5 years;

**(ii)** if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

**(iii)** if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

**(B)** If the firearm possessed by a person convicted of a violation of this subsection--

**(i)** is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

**(ii)** is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

**(C)** In the case of a second or subsequent conviction under this subsection, the person shall--

**(i)** be sentenced to a term of imprisonment of not less than 25 years; and

**(ii)** if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

**(D)** Notwithstanding any other provision of law--

**(i)** a court shall not place on probation any person convicted of a violation of this subsection; and

**(ii)** no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

**(2)** For purposes of this subsection, the term "drug trafficking crime" means any felony punishable 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.](#)), or chapter 705 of title 46.

**(3)** For purposes of this subsection the term “crime of violence” means an offense that is a felony and--

**(A)** has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

**(B)** that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

**(4)** For purposes of this subsection, the term “brandish” means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

## **21 U.S.C. § 841. Prohibited Acts [Drug Abuse Prevention and Control]**

### (a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally--

**(1)** to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

**(2)** to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

### (b) Penalties

Except as otherwise provided in [section 859](#), [860](#), or [861](#) of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

**(1)(A)** In the case of a violation of subsection (a) of this section involving--

**(i)** 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

**(ii)** 5 kilograms or more of a mixture or substance containing a detectable amount of--

**(I)** coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

**(II)** cocaine, its salts, optical and geometric isomers, and salts of isomers;

**(III)** ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

**(IV)** any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

**(iii)** 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

**(iv)** 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

**(v)** 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

**(vi)** 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

**(vii)** 1000 kilograms or more of a mixture or substance containing a detectable amount of marijuana, or 1,000 or more marijuana plants regardless of weight; or

**(viii)** 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of

a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or \$10,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or \$20,000,000 if the defendant is an individual or \$75,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of [section 849](#), 859, 860, or 861 of this title after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. Notwithstanding [section 3583 of Title 18](#), any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior

conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

**(B)** In the case of a violation of subsection (a) of this section involving--

**(i)** 100 grams or more of a mixture or substance containing a detectable amount of heroin;

**(ii)** 500 grams or more of a mixture or substance containing a detectable amount of--

**(I)** coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

**(II)** cocaine, its salts, optical and geometric isomers, and salts of isomers;

**(III)** ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

**(IV)** any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

**(iii)** 28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

**(iv)** 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

**(v)** 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

**(vi)** 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

**(vii)** 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana, or 100 or more marijuana plants regardless of weight; or

**(viii)** 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or \$5,000,000 if the defendant is an individual or \$25,000,000 if the defendant is other than an individual, or both. If any person commits such a

violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or \$8,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both.

Notwithstanding [section 3583 of Title 18](#), any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

**(C)** In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillary J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such

substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or \$2,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Notwithstanding [section 3583 of Title 18](#), any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

## **21 U.S.C. § 851. Proceedings to establish prior convictions**

(a) Information filed by United States Attorney

**(1)** No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon. Upon a showing by the United States attorney that facts regarding prior convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.

**(2)** An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three years unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

(b) Affirmation or denial of previous conviction

If the United States attorney files an information under this section, the court shall after conviction but before pronouncement of sentence inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted

as alleged in the information, and shall inform him that any challenge to a prior conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

(c) Denial; written response; hearing

**(1)** If the person denies any allegation of the information of prior conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the United States attorney. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the United States attorney to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by subsection (a)(1) of this section. The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the United States attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the court shall enter findings of fact and conclusions of law.

**(2)** A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a prior conviction, not raised by response to the information

before an increased sentence is imposed in reliance thereon, shall be waived unless good cause be shown for failure to make a timely challenge.

(d) Imposition of sentence

**(1)** If the person files no response to the information, or if the court determines, after hearing, that the person is subject to increased punishment by reason of prior convictions, the court shall proceed to impose sentence upon him as provided by this part.

**(2)** If the court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as a matter of law, the court shall, at the request of the United States attorney, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by this part. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.

(e) Statute of limitations

No person who stands convicted of an offense under this part may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction.

**18 U.S.C. § 2252. Certain activities relating to material involving the sequel exploitation of minors**

**(a)** Any person who--

**(1)** knowingly transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mails, any visual depiction, if--

**(A)** the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

**(B)** such visual depiction is of such conduct;

**(2)** knowingly receives, or distributes, any visual depiction using any means or facility of interstate or foreign commerce or that has been mailed, or has been shipped or transported in or affecting interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer, or knowingly reproduces any visual depiction for distribution using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or through the mails, if--

**(A)** the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

**(B)** such visual depiction is of such conduct;

**(3)** either--

**(A)** in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in [section 1151](#) of this title, knowingly sells or possesses with intent to sell any visual depiction; or

**(B)** knowingly sells or possesses with intent to sell any visual depiction that has been mailed, shipped, or transported using any means or facility of interstate or foreign commerce, or has been shipped or transported in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported using any means or facility of interstate or foreign commerce, including by computer, if--

**(i)** the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

**(ii)** such visual depiction is of such conduct; or

**(4)** either--

**(A)** in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in [section 1151](#) of this title, knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction; or

**(B)** knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if--

**(i)** the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

**(ii)** such visual depiction is of such conduct;

shall be punished as provided in subsection (b) of this section.

**(b)(1)** Whoever violates, or attempts or conspires to violate, paragraph (1), (2), or (3) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but if such person has a prior conviction under this chapter, [section 1591](#), chapter 71, chapter 109A, chapter 117, or under [section 920 of title 10](#) (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

**(2)** Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned not more than 10 years, or both, but if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under [section 920 of Title 10](#) (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

**(c) Affirmative defense.**--It shall be an affirmative defense to a charge of violating paragraph (4) of subsection (a) that the defendant--

**(1)** possessed less than three matters containing any visual depiction proscribed by that paragraph; and

**(2)** promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof--

**(A)** took reasonable steps to destroy each such visual depiction; or

**(B)** reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

**18 U.S.C. § 2252A. Certain activities relating to material constituting or containing child pornography**

**(a)** Any person who--

**(1)** knowingly transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mails, any visual depiction, if--

**(A)** the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

**(B)** such visual depiction is of such conduct;

**(2)** knowingly receives, or distributes, any visual depiction using any means or facility of interstate or foreign commerce or that has been mailed, or has been shipped or transported in or affecting interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer, or knowingly reproduces any visual depiction for distribution using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or through the mails, if--

**(A)** the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

**(B)** such visual depiction is of such conduct;

**(3)** either--

**(A)** in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in [section 1151](#) of this title, knowingly sells or possesses with intent to sell any visual depiction; or

**(B)** knowingly sells or possesses with intent to sell any visual depiction that has been mailed, shipped, or transported using any means or facility of interstate or foreign commerce, or has been shipped or transported in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported using any means or facility of interstate or foreign commerce, including by computer, if--

**(i)** the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

**(ii)** such visual depiction is of such conduct; or

**(4)** either--

**(A)** in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in [section 1151](#) of this title, knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video

tapes, or other matter which contain any visual depiction;  
or

**(B)** knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if--

**(i)** the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

**(ii)** such visual depiction is of such conduct;

shall be punished as provided in subsection (b) of this section.

**(b)(1)** Whoever violates, or attempts or conspires to violate, paragraph (1), (2), or (3) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but if such person has a prior conviction under this chapter, [section 1591](#), chapter 71, chapter 109A, chapter 117, or under [section 920 of title 10](#) (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person

shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

**(2)** Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned not more than 10 years, or both, but if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under [section 920 of Title 10](#) (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

**(c) Affirmative defense.**--It shall be an affirmative defense to a charge of violating paragraph (4) of subsection (a) that the defendant--

**(1)** possessed less than three matters containing any visual depiction proscribed by that paragraph; and

**(2)** promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof--

**(A)** took reasonable steps to destroy each such visual depiction; or

**(B)** reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

## **8 U.S.C. § 1326. Reentry of removed aliens**

(a) In general

Subject to subsection (b) of this section, any alien who--

**(1)** has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter

**(2)** enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act,

shall be fined under Title 18, or imprisoned not more than 2 years, or both.

(b) Criminal penalties for reentry of certain removed aliens

Notwithstanding subsection (a) of this section, in the case of any alien described in such subsection--

**(1)** whose removal was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under Title 18, imprisoned not more than 10 years, or both;

**(2)** whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both;

**(3)** who has been excluded from the United States pursuant to [section 1225\(c\)](#) of this title because the alien was excludable under [section 1182\(a\)\(3\)\(B\)](#) of this title or who has been removed from the United States pursuant to the provisions of subchapter V of this chapter, and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under Title 18 and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence. [\[FN1\]](#) or

**(4)** who was removed from the United States pursuant to [section 1231\(a\)\(4\)\(B\)](#) of this title who thereafter, without the permission of the Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be fined under Title 18, imprisoned for not more than 10 years, or both.

For the purposes of this subsection, the term "removal" includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either Federal or State law.

(c) Reentry of alien deported prior to completion of term of imprisonment

Any alien deported pursuant to [section 1252\(h\)\(2\)](#) [\[FN2\]](#) of this title who enters, attempts to enter, or is at any

time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.

(d) Limitation on collateral attack on underlying deportation order

In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) of this section or subsection (b) of this section unless the alien demonstrates that--

**(1)** the alien exhausted any administrative remedies that may have been available to seek relief against the order;

**(2)** the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

**(3)** the entry of the order was fundamentally unfair.

## **8 U.S.C. § 1101(a)(43). Definitions**

**(43)** The term “aggravated felony” means--

**(A)** murder, rape, or sexual abuse of a minor;

**(B)** illicit trafficking in a controlled substance (as defined in [section 802 of Title 21](#)), including a drug trafficking crime (as defined in [section 924\(c\) of Title 18](#));

**(C)** illicit trafficking in firearms or destructive devices (as defined in [section 921 of Title 18](#)) or in explosive materials (as defined in section 841(c) of that title);

**(D)** an offense described in [section 1956 of Title 18](#) (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000;

**(E)** an offense described in--

**(i)** [section 842\(h\)](#) or [\(i\) of Title 18](#), or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

**(ii)** [section 922\(g\)\(1\), \(2\), \(3\), \(4\), or \(5\), \(j\), \(n\), \(o\), \(p\), or \(r\) or 924\(b\) or \(h\) of Title 18](#) (relating to firearms offenses); or

**(iii)** [section 5861 of Title 26](#) (relating to firearms offenses);

**(F)** a crime of violence (as defined in [section 16 of Title 18](#), but not including a purely political offense) for which the term of imprisonment at [\[FN3\]](#) least one year;

**(G)** a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at [\[FN3\]](#) least one year;

**(H)** an offense described in [section 875, 876, 877, or 1202 of Title 18](#) (relating to the demand for or receipt of ransom);

**(I)** an offense described in [section 2251, 2251A, or 2252 of Title 18](#) (relating to child pornography);

**(J)** an offense described in [section 1962 of Title 18](#) (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;

**(K)** an offense that--

**(i)** relates to the owning, controlling, managing, or supervising of a prostitution business;

**(ii)** is described in [section 2421, 2422, or 2423 of Title 18](#) (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

**(iii)** is described in any of [sections 1581-1585 or 1588-1591 of Title 18](#) (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

**(L)** an offense described in--

**(i)** section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of Title 18;

**(ii)** [section 421 of Title 50](#) (relating to protecting the identity of undercover intelligence agents); or

**(iii)** [section 421 of Title 50](#) (relating to protecting the identity of undercover agents);

**(M)** an offense that--

**(i)** involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000; or

**(ii)** is described in [section 7201 of Title 26](#) (relating to tax evasion) in which the revenue loss to the Government exceeds \$10,000;

**(N)** an offense described in [paragraph \(1\)\(A\)](#) or [\(2\) of section 1324\(a\)](#) of this title (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter [\[FN4\]](#)

**(O)** an offense described in [section 1325\(a\)](#) or [1326](#) of this title committed by an alien who was previously

deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

**(P)** an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of [section 1543 of Title 18](#) or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;

**(Q)** an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

**(R)** an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

**(S)** an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

**(T)** an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

**(U)** an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996.

## **18 U.S.C. § 3553. Imposition of a sentence**

### **(a) Factors to be considered in imposing a**

**sentence.**--The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

**(1)** the nature and circumstances of the offense and the history and characteristics of the defendant;

**(2)** the need for the sentence imposed--

**(A)** to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

**(B)** to afford adequate deterrence to criminal conduct;

**(C)** to protect the public from further crimes of the defendant; and

**(D)** to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

**(3)** the kinds of sentences available;

**(4)** the kinds of sentence and the sentencing range established for--

**(A)** the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--

**(i)** issued by the Sentencing Commission pursuant to [section 994\(a\)\(1\) of title 28, United States Code](#), subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under [section 994\(p\) of title 28](#)); and

**(ii)** that, except as provided in [section 3742\(g\)](#), are in effect on the date the defendant is sentenced; or

**(B)** in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to [section 994\(a\)\(3\) of title 28, United States Code](#), taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under [section 994\(p\) of title 28](#));

**(5)** any pertinent policy statement--

**(A)** issued by the Sentencing Commission pursuant to [section 994\(a\)\(2\) of title 28, United States Code](#), subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under [section 994\(p\) of title 28](#)); and

**(B)** that, except as provided in [section 3742\(g\)](#), is in effect on the date the defendant is sentenced. [\[FN1\]](#)

**(6)** the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

**(7)** the need to provide restitution to any victims of the offense.

**18 U.S.C. § 3553(e). Limited authority to impose a sentence below a statutory minimum**

Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to [section 994 of title 28, United States Code](#).

## **18 U.S.C. § 3559(c). Imprisonment of certain violent felons**

**(1) Mandatory life imprisonment.**--Notwithstanding any other provision of law, a person who is convicted in a court of the United States of a serious violent felony shall be sentenced to life imprisonment if--

**(A)** the person has been convicted (and those convictions have become final) on separate prior occasions in a court of the United States or of a State of--

**(i)** 2 or more serious violent felonies; or

**(ii)** one or more serious violent felonies and one or more serious drug offenses; and

**(B)** each serious violent felony or serious drug offense used as a basis for sentencing under this subsection, other than the first, was committed after the defendant's conviction of the preceding serious violent felony or serious drug offense.

**(2) Definitions.**--For purposes of this subsection--

**(A)** the term "assault with intent to commit rape" means an offense that has as its elements engaging in physical contact with another person or using or brandishing a weapon against another person with intent to commit aggravated sexual abuse or sexual abuse (as described in [sections 2241](#) and [2242](#));

**(B)** the term "arson" means an offense that has as its elements maliciously damaging or destroying any

building, inhabited structure, vehicle, vessel, or real property by means of fire or an explosive;

**(C)** the term “extortion” means an offense that has as its elements the extraction of anything of value from another person by threatening or placing that person in fear of injury to any person or kidnapping of any person;

**(D)** the term “firearms use” means an offense that has as its elements those described in [section 924\(c\)](#) or [929\(a\)](#), if the firearm was brandished, discharged, or otherwise used as a weapon and the crime of violence or drug trafficking crime during and relation to which the firearm was used was subject to prosecution in a court of the United States or a court of a State, or both;

**(E)** the term “kidnapping” means an offense that has as its elements the abduction, restraining, confining, or carrying away of another person by force or threat of force;

**(F)** the term “serious violent felony” means--

**(i)** a Federal or State offense, by whatever designation and wherever committed, consisting of murder (as described in [section 1111](#)); manslaughter other than involuntary manslaughter (as described in [section 1112](#)); assault with intent to commit murder (as described in [section 113\(a\)](#)); assault with intent to commit rape; aggravated sexual abuse and sexual abuse (as described in [sections 2241](#) and [2242](#)); abusive sexual contact (as described in [sections 2244 \(a\)\(1\)](#) and [\(a\)\(2\)](#)); kidnapping; aircraft piracy (as described in [section 46502 of Title 49](#)); robbery (as described in [section 2111](#), [2113](#),

or [2118](#)); carjacking (as described in [section 2119](#)); extortion; arson; firearms use; firearms possession (as described in [section 924\(c\)](#)); or attempt, conspiracy, or solicitation to commit any of the above offenses; and

**(ii)** any other offense punishable by a maximum term of imprisonment of 10 years or more 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;

**(G)** the term "State" means a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States; and

**(H)** the term "serious drug offense" means--

**(i)** an offense that is punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act ([21 U.S.C. 841\(b\)\(1\)\(A\)](#), [848](#)) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act ([21 U.S.C. 960\(b\)\(1\)\(A\)](#)); or

**(ii)** an offense under State law that, had the offense been prosecuted in a court of the United States, would have been punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act ([21 U.S.C. 841\(b\)\(1\)\(A\)](#), [848](#)) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act ([21 U.S.C. 960\(b\)\(1\)\(A\)](#)).

**(3) Nonqualifying felonies.--**

**(A) Robbery in certain cases.**--Robbery, an attempt, conspiracy, or solicitation to commit robbery; or an offense described in paragraph (2)(F)(ii) shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that--

**(i)** no firearm or other dangerous weapon was used in the offense and no threat of use of a firearm or other dangerous weapon was involved in the offense; and

**(ii)** the offense did not result in death or serious bodily injury (as defined in [section 1365](#)) to any person.

**(B) Arson in certain cases.**--Arson shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that--

**(i)** the offense posed no threat to human life; and

**(ii)** the defendant reasonably believed the offense posed no threat to human life.

**(4) Information filed by United States Attorney.**--The provisions of section 411(a) of the Controlled Substances Act ([21 U.S.C. 851\(a\)](#)) shall apply to the imposition of sentence under this subsection.

**(5) Rule of construction.**--This subsection shall not be construed to preclude imposition of the death penalty.

**(6) Special provision for Indian country.**--No person subject to the criminal jurisdiction of an Indian tribal government shall be subject to this subsection for any offense for which Federal jurisdiction is solely predicated on Indian country (as defined in [section 1151](#)) and which occurs within the boundaries of such Indian country unless the governing body of the tribe has elected that this subsection have effect over land and persons subject to the criminal jurisdiction of the tribe.

**(7) Resentencing upon overturning of prior conviction.**--If the conviction for a serious violent felony or serious drug offense that was a basis for sentencing under this subsection is found, pursuant to any appropriate State or Federal procedure, to be unconstitutional or is vitiated on the explicit basis of innocence, or if the convicted person is pardoned on the explicit basis of innocence, the person serving a sentence imposed under this subsection shall be resentenced to any sentence that was available at the time of the original sentencing.

## **18 U.S.C. § 3559(e). Mandatory life imprisonment for repeated sex offenses against children.**

**(1) In general.**--A person who is convicted of a Federal sex offense in which a minor is the victim shall be sentenced to life imprisonment if the person has a prior sex conviction in which a minor was the victim, unless the sentence of death is imposed.

**(2) Definitions.**--For the purposes of this subsection--

**(A)** the term "Federal sex offense" means an offense under [section 1591](#) (relating to sex trafficking of children), 2241 (relating to aggravated sexual abuse), 2242 (relating to sexual abuse), 2244(a)(1) (relating to abusive sexual contact), 2245 (relating to sexual abuse resulting in death), 2251 (relating to sexual exploitation of children), 2251A (relating to selling or buying of children), 2422(b) (relating to coercion and enticement of a minor into prostitution), or 2423(a) (relating to transportation of minors);

**(B)** the term "State sex offense" means an offense under State law that is punishable by more than one year in prison and consists of conduct that would be a Federal sex offense if, to the extent or in the manner specified in the applicable provision of this title--

**(i)** the offense involved interstate or foreign commerce, or the use of the mails; or

**(ii)** the conduct occurred in any commonwealth, territory, or possession of the United States, within the special maritime and territorial jurisdiction of the United

States, in a Federal prison, on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country (as defined in [section 1151](#));

**(C)** the term “prior sex conviction” means a conviction for which the sentence was imposed before the conduct occurred constituting the subsequent Federal sex offense, and which was for a Federal sex offense or a State sex offense;

**(D)** the term “minor” means an individual who has not attained the age of 17 years; and

**(E)** the term “state” has the meaning given that term in subsection (c)(2).

**(3) Nonqualifying felonies.**--An offense described in [section 2422\(b\)](#) or [2423\(a\)](#) shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that--

**(A)** the sexual act or activity was consensual and not for the purpose of commercial or pecuniary gain;

**(B)** the sexual act or activity would not be punishable by more than one year in prison under the law of the State in which it occurred; or

**(C)** no sexual act or activity occurred.

## **42 U.S.C. § 16901. Declaration of purpose**

In order to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators against the victims listed below, Congress in this chapter establishes a comprehensive national system for the registration of those offenders:

**(1)** Jacob Wetterling, who was 11 years old, was abducted in 1989 in Minnesota, and remains missing.

**(2)** Megan Nicole Kanka, who was 7 years old, was abducted, sexually assaulted, and murdered in 1994, in New Jersey.

**(3)** Pam Lychner, who was 31 years old, was attacked by a career offender in Houston, Texas.

**(4)** Jetseta Gage, who was 10 years old, was kidnapped, sexually assaulted, and murdered in 2005, in Cedar Rapids, Iowa.

**(5)** Dru Sjodin, who was 22 years old, was sexually assaulted and murdered in 2003, in North Dakota.

**(6)** Jessica Lunsford, who was 9 years old, was abducted, sexually assaulted, buried alive, and murdered in 2005, in Homosassa, Florida.

**(7)** Sarah Lunde, who was 13 years old, was strangled and murdered in 2005, in Ruskin, Florida.

**(8)** Amie Zyla, who was 8 years old, was sexually assaulted in 1996 by a juvenile offender in Waukesha, Wisconsin, and has become an advocate for child victims and protection of children from juvenile sex offenders.

**(9)** Christy Ann Fornoff, who was 13 years old, was abducted, sexually assaulted, and murdered in 1984, in Tempe, Arizona.

**(10)** Alexandra Nicole Zapp, who was 30 years old, was brutally attacked and murdered in a public restroom by a repeat sex offender in 2002, in Bridgewater, Massachusetts.

**(11)** Polly Klaas, who was 12 years old, was abducted, sexually assaulted, and murdered in 1993 by a career offender in California.

**(12)** Jimmy Ryce, who was 9 years old, was kidnapped and murdered in Florida on September 11, 1995.

**(13)** Carlie Brucia, who was 11 years old, was abducted and murdered in Florida in February, 2004.

**(14)** Amanda Brown, who was 7 years old, was abducted and murdered in Florida in 1998.

**(15)** Elizabeth Smart, who was 14 years old, was abducted in Salt Lake City, Utah in June 2002.

**(16)** Molly Bish, who was 16 years old, was abducted in 2000 while working as a lifeguard in Warren, Massachusetts, where her remains were found 3 years later.

**(17)** Samantha Runnion, who was 5 years old, was abducted, sexually assaulted, and murdered in California on July 15, 2002.

## **42 U.S.C. § 16913. Registry requirements for sex offenders**

### **(a) In general**

A sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. For initial registration purposes only, a sex offender shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence.

### **(b) Initial registration**

The sex offender shall initially register--

**(1)** before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or

**(2)** not later than 3 business days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment.

### **(c) Keeping the registration current**

A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) of this section and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. That jurisdiction shall immediately provide that information to all other jurisdictions in which the offender is required to register.

(d) Initial registration of sex offenders unable to comply with subsection (b) of this section

The Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before the enactment of this chapter or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b) of this section.

(e) State penalty for failure to comply

Each jurisdiction, other than a Federally recognized Indian tribe, shall provide a criminal penalty that includes a maximum term of imprisonment that is greater than 1 year for the failure of a sex offender to comply with the requirements of this subchapter.

## **18 U.S.C. § 2250. Failure to register**

**(a) In general.**--Whoever--

**(1)** is required to register under the Sex Offender Registration and Notification Act;

**(2)(A)** is a sex offender as defined for the purposes of the Sex Offender Registration and Notification Act by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or

**(B)** travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and

**(3)** knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act;

shall be fined under this title or imprisoned not more than 10 years, or both.

**(b) Affirmative defense.**--In a prosecution for a violation under subsection (a), it is an affirmative defense that--

**(1)** uncontrollable circumstances prevented the individual from complying;

**(2)** the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and

**(3)** the individual complied as soon as such circumstances ceased to exist.

# United States Sentencing Guidelines. Ch. 5, Part A, Sentencing Table

SENTENCING TABLE  
(in months of imprisonment)  
Criminal History Category (Criminal History Points)

ZONE A

<b>Offense Level</b>	<b>I (0 or 1)</b>	<b>II (2 or 3)</b>	<b>III (4, 5, 6)</b>	<b>IV (7, 8, 9)</b>	<b>V (10, 11, 12)</b>	<b>VI (13 or more)</b>
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	
3	0-6	0-6	0-6	0-6		
4	0-6	0-6	0-6			
5	0-6	0-6				
6	0-6					
7	0-6					
8	0-6					

ZONE B

<b>Offense Level</b>	<b>I (0 or 1)</b>	<b>II (2 or 3)</b>	<b>III (4, 5, 6)</b>	<b>IV (7, 8, 9)</b>	<b>V (10, 11, 12)</b>	<b>VI (13 or more)</b>
2						1-7
3					2-8	3-9
4				2-8	4-10	6-12
5			1-7	4-10	6-12	9-15

6		1-7	2-8	6-12	9-15
7		2-8	4-10	8-14	
8		4-10	6-12		
9	4-10	6-12	8-14		
10	6-12	8-14			
11	8-14				

ZONE C

<b>Offense Level</b>	<b>I (0 or 1)</b>	<b>II (2 or 3)</b>	<b>III (4, 5, 6)</b>	<b>IV (7, 8, 9)</b>	<b>V (10, 11, 12)</b>	<b>VI (13 or more)</b>
6						12-18
7					12-18	
8				10-16		
9				12-18		
10			10-16			
11		10-16	12-18			
12	10-16	12-18				
13	12-18					

ZONE D

<b>Offense Level</b>	<b>I (0 or 1)</b>	<b>II (2 or 3)</b>	<b>III (4, 5, 6)</b>	<b>IV (7, 8, 9)</b>	<b>V (10, 11, 12)</b>	<b>VI (13 or more)</b>
7						15-21
8					15-21	18-24

9					18-24	21-27
10				15-21	21-27	24-30
11				18-24	24-30	27-33
12			15-21	21-27	27-33	30-37
13		15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327

35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life

## **United States Sentencing Guidelines §2 K2.1.**

### **Unlawful Receipt, Possession, of Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition**

**(a) In general.**--Whoever--

**(1)** is required to register under the Sex Offender Registration and Notification Act;

**(2)(A)** is a sex offender as defined for the purposes of the Sex Offender Registration and Notification Act by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or

**(B)** travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and

**(3)** knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act;

shall be fined under this title or imprisoned not more than 10 years, or both.

**(b) Affirmative defense.**--In a prosecution for a violation under subsection (a), it is an affirmative defense that--

**(1)** uncontrollable circumstances prevented the individual from complying;

**(2)** the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and

**(3)** the individual complied as soon as such circumstances ceased to exist.

## **United States Sentencing Guideline §4B1.4. Armed Career Criminal**

**(a)** A defendant who is subject to an enhanced sentence under the provisions of [18 U.S.C. § 924\(e\)](#) is an armed career criminal.

**(b)** The offense level for an armed career criminal is the greatest of:

**(1)** the offense level applicable from Chapters Two and Three; or

**(2)** the offense level from [§ 4B1.1](#) (Career Offender) if applicable; or

**(3)(A)** 34, if the defendant used or possessed the firearm or ammunition in connection with either a crime of violence, as defined in [§ 4B1.2\(a\)](#), or a controlled substance offense, as defined in [§ 4B1.2\(b\)](#), or if the firearm possessed by the defendant was of a type described in [26 U.S.C. 5845\(a\)](#) [\[FN\\*\]](#); or

**(B)** 33, otherwise. [\[FN\\*\]](#)

**(c)** The criminal history category for an armed career criminal is the greatest of:

**(1)** the criminal history category from Chapter Four, Part A (Criminal History), or [§ 4B1.1](#) (Career Offender) if applicable; or

**(2)** Category VI, if the defendant used or possessed the firearm or ammunition in connection with either a crime

of violence, as defined in [§ 4B1.2\(a\)](#), or a controlled substance offense, as defined in [§ 4B1.2\(b\)](#), or if the firearm possessed by the defendant was of a type described in [26 U.S.C. § 5845\(a\)](#); or

**(3)** Category IV.

**United States Sentencing Guideline § 2D1.1.  
Unlawful Manufacturing, Importing, Exporting or  
Trafficking (Including Possession with Intent to  
Commit These Offenses); Attempt or Conspiracy**

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

**(1)** 43, if the defendant is convicted under [21 U.S.C. § 841\(b\)\(1\)\(A\)](#), [\(b\)\(1\)\(B\)](#), or [\(b\)\(1\)\(C\)](#), or [21 U.S.C. § 960\(b\)\(1\)](#), [\(b\)\(2\)](#), or [\(b\)\(3\)](#), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense; or

**(2)** 38, if the defendant is convicted under [21 U.S.C. § 841\(b\)\(1\)\(A\)](#), [\(b\)\(1\)\(B\)](#), or [\(b\)\(1\)\(C\)](#), or [21 U.S.C. § 960\(b\)\(1\)](#), [\(b\)\(2\)](#), or [\(b\)\(3\)](#), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or

**(3)** 30, if the defendant is convicted under [21 U.S.C. 841\(b\)\(1\)\(E\)](#) or [21 U.S.C. 960\(b\)\(5\)](#), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense; or

**(4)** 26, if the defendant is convicted under [21 U.S.C. 841\(b\)\(1\)\(E\)](#) or [21 U.S.C. 960\(b\)\(5\)](#), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or

**(5)** The offense level specified in the Drug Quantity Table set forth in subsection (c), except that if (A) the defendant receives an adjustment under [§ 3B1.2](#) (Mitigating Role); and (B) the base offense level under subsection (c) is (i) level 32, decrease by 2 levels; (ii) level 34 or level 36, decrease by 3 levels; or (iii) level 38, decrease by 4 levels. If the resulting offense level is greater than level 32 and the defendant receives the 4-level (“minimal participant”) reduction in [§ 3B1.2\(a\)](#), decrease to level 32.

**(b) Specific Offense Characteristics**

**(1)** If a dangerous weapon (including a firearm) was possessed, increase by 2 levels.

**(2)** If the defendant used violence, made a credible threat to use violence, or directed the use of violence, increase by 2 levels.

**(3)** If the defendant unlawfully imported or exported a controlled substance under circumstances in which (A) an aircraft other than a regularly scheduled commercial air carrier was used to import or export the controlled substance, (B) a submersible vessel or semi-submersible vessel as described in [18 U.S.C. 2285](#) was used, or (C) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance, increase by 2 levels. If the resulting offense level is less than level 26, increase to level 26.

**(4)** If the object of the offense was the distribution of a controlled substance in a prison, correctional facility, or detention facility, increase by 2 levels.

**(5)** If (A) the offense involved the importation of amphetamine or methamphetamine or the manufacture of amphetamine or methamphetamine from listed chemicals that the defendant knew were imported unlawfully, and (B) the defendant is not subject to an adjustment under [§ 3B1.2](#) (Mitigating Role), increase by 2 levels.

**(6)** If the defendant is convicted under [21 U.S.C. 865](#), increase by 2 levels.

**(7)** If the defendant, or a person for whose conduct the defendant is accountable under [§ 1B1.3](#) (Relevant Conduct), distributed a controlled substance through mass-marketing by means of an interactive computer service, increase by 2 levels.

**(8)** If the offense involved the distribution of an anabolic steroid and a masking agent, increase by 2 levels.

**(9)** If the defendant distributed an anabolic steroid to an athlete, increase by 2 levels.

**(10)** If the defendant was convicted under [21 U.S.C. 841\(g\)\(1\)\(A\)](#), increase by 2 levels.

**(11)** If the defendant bribed, or attempted to bribe, a law enforcement officer to facilitate the commission of the offense, increase by 2 levels.

**(12)** If the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance, increase by 2 levels.

**(13)** (Apply the greatest):

**(A)** If the offense involved (i) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (ii) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by 2 levels.

**(B)** If the defendant was convicted under [21 U.S.C. 860a](#) of distributing, or possessing with intent to distribute, methamphetamine on premises where a minor is present or resides, increase by 2 levels. If the resulting offense level is less than level 14, increase to level 14.

**(C)** If--

**(i)** the defendant was convicted under [21 U.S.C. 860a](#) of manufacturing, or possessing with intent to manufacture, methamphetamine on premises where a minor is present or resides; or

**(ii)** the offense involved the manufacture of amphetamine or methamphetamine and the offense created a substantial risk of harm to (I) human life other than a life described in subdivision (D); or (II) the environment, increase by 3 levels. If the resulting offense level is less than level 27, increase to level 27.

**(D)** If the offense (i) involved the manufacture of amphetamine or methamphetamine; and (ii) created a

substantial risk of harm to the life of a minor or an incompetent, increase by 6 levels. If the resulting offense level is less than level 30, increase to level 30.

**(14)** If the defendant receives an adjustment under [§ 3B1.1](#) (Aggravating Role) and the offense involved 1 or more of the following factors:

**(A)(i)** The defendant used fear, impulse, friendship, affection, or some combination thereof to involve another individual in the illegal purchase, sale, transport, or storage of controlled substances, (ii) the individual received little or no compensation from the illegal purchase, sale, transport, or storage of controlled substances, and (iii) the individual had minimal knowledge of the scope and structure of the enterprise;

**(B)** The defendant, knowing that an individual was (i) less than 18 years of age, (ii) 65 or more years of age, (iii) pregnant, or (iv) unusually vulnerable due to physical or mental condition or otherwise particularly susceptible to the criminal conduct, distributed a controlled substance to that individual or involved that individual in the offense;

**(C)** The defendant was directly involved in the importation of a controlled substance;

**(D)** The defendant engaged in witness intimidation, tampered with or destroyed evidence, or otherwise obstructed justice in connection with the investigation or prosecution of the offense;

**(E)** The defendant committed the offense as part of a pattern of criminal conduct engaged in as a livelihood,

Increase by 2 levels.

**(15)** If the defendant receives the 4-level (“minimal participant”) reduction in [§ 3B1.2\(a\)](#) and the offense involved all of the following factors:

**(A)** The defendant was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense;

**(B)** The defendant received no monetary compensation from the illegal purchase, sale, transport, or storage of controlled substances; and

**(C)** The defendant had minimal knowledge of the scope and structure of the enterprise,

Decrease by 2 levels.

(16) If the defendant meets the criteria set forth in [subdivisions \(1\) to \(5\) of subsection \(a\) of § 5C1.2](#) (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), decrease by 2 levels.

## (c) DRUG QUANTITY TABLE

	<b><i>Controlled Substances and Quantity*</i></b>	<b><i>Base Offense Level</i></b>
<b>-1</b>	30 KG or more of Heroin;  150 KG or more of Cocaine;  8.4 KG or more of Cocaine Base;  30 KG or more of PCP, or 3 KG or more of PCP (actual);  15 KG or more of Methamphetamine, or 1.5 KG or more of Methamphetamine (actual), or 1.5 KG or more of "Ice";  15 KG or more of Amphetamine, or 1.5 KG or more of Amphetamine (actual);  300 G or more of LSD;  12 KG or more of Fentanyl;  3 KG or more of a Fentanyl Analogue;	<b>Level 38</b>

30,000 KG or more  
of Marihuana;

6,000 KG or more  
of Hashish;

600 KG or more of  
Hashish Oil;

30,000,000 units  
or more of  
Ketamine;

30,000,000 units  
or more of  
Schedule I or II  
Depressants;

1,875,000 units or  
more of  
Flunitrazepam.

**-2**

At least 10 KG but  
less than 30 KG of  
Heroin;

At least 50 KG but  
less than 150 KG  
of Cocaine;

At least 2.8 KG but  
less than 8.4 KG of  
Cocaine Base;

At least 10 KG but  
less than 30 KG of  
PCP, or at least 1  
KG but less than 3  
KG of PCP (actual);

**Level 36**

At least 5 KG but less than 15 KG of Methamphetamine, or at least 500 G but less than 1.5 KG of Methamphetamine (actual), or at least 500 G but less than 1.5 KG of "Ice";

At least 5 KG but less than 15 KG of Amphetamine, or at least 500 G but less than 1.5 KG of Amphetamine (actual);

At least 100 G but less than 300 G of LSD;

At least 4 KG but less than 12 KG of Fentanyl;

At least 1 KG but less than 3 KG of a Fentanyl Analogue;

At least 10,000 KG but less than 30,000 KG of Marihuana;

At least 2,000 KG but less than 6,000 KG of Hashish;

At least 200 KG  
but less than 600  
KG of Hashish Oil;

At least  
10,000,000 but  
less than  
30,000,000 units  
of Ketamine;

At least  
10,000,000 but  
less than  
30,000,000 units  
of Schedule I or II  
Depressants;

At least 625,000  
but less than  
1,875,000 units of  
Flunitrazepam.

**-3**

At least 3 KG but  
less than 10 KG of  
Heroin;

At least 15 KG but  
less than 50 KG of  
Cocaine;

At least 840 G but  
less than 2.8 KG of  
Cocaine Base;

At least 3 KG but  
less than 10 KG of  
PCP, or at least  
300 G but less  
than 1 KG of PCP  
(actual);

**Level 34**

At least 1.5 KG but less than 5 KG of Methamphetamine, or at least 150 G but less than 500 G of Methamphetamine (actual), or at least 150 G but less than 500 G of "Ice";

At least 1.5 KG but less than 5 KG of Amphetamine, or at least 150 G but less than 500 G of Amphetamine (actual);

At least 30 G but less than 100 G of LSD;

At least 1.2 KG but less than 4 KG of Fentanyl;

At least 300 G but less than 1 KG of a Fentanyl Analogue;

At least 3,000 KG but less than 10,000 KG of Marihuana;

At least 600 KG but less than 2,000 KG of Hashish;

At least 60 KG but less than 200 KG of Hashish Oil;

At least 3,000,000 but less than 10,000,000 units of Ketamine;

At least 3,000,000 but less than 10,000,000 units of Schedule I or II Depressants;

At least 187,500 but less than 625,000 units of Flunitrazepam.

**-4**

At least 1 KG but less than 3 KG of Heroin;

At least 5 KG but less than 15 KG of Cocaine;

At least 280 G but less than 840 G of Cocaine Base;

At least 1 KG but less than 3 KG of PCP, or at least 100 G but less than 300 G of PCP (actual);

At least 500 G but less than 1.5 KG of Methamphetamine, or

**Level 32**

At least 500 G but less than 1.5 KG of Amphetamine, or at least 50 G but less than 150 G of Amphetamine (actual);

At least 50 G but less than 150 G of Methamphetamine (actual), or at least 50 G but less than 150 G of "Ice";

At least 10 G but less than 30 G of LSD;

At least 400 G but less than 1.2 KG of Fentanyl;

At least 100 G but less than 300 G of a Fentanyl Analogue;

At least 1,000 KG but less than 3,000 KG of Marihuana;

At least 200 KG but less than 600 KG of Hashish;

At least 20 KG but less than 60 KG of Hashish Oil;

At least 1,000,000  
but less than  
3,000,000 units of  
Ketamine;

At least 1,000,000  
but less than  
3,000,000 units of  
Schedule I or II  
Depressants;

At least 62,500 but  
less than 187,500  
units of  
Flunitrazepam.

**-5**

At least 700 G but  
less than 1 KG of  
Heroin;

**Level 30**

At least 3.5 KG but  
less than 5 KG of  
Cocaine;

At least 196 G but  
less than 280 G of  
Cocaine Base;

At least 700 G but  
less than 1 KG of  
PCP, or at least 70  
G but less than  
100 G of PCP  
(actual);

At least 350 G but less than 500 G of Methamphetamine, or at least 35 G but less than 50 G of Methamphetamine (actual), or at least 35 G but less than 50 G of "Ice";

At least 350 G but less than 500 G of Amphetamine, or at least 35 G but less than 50 G of Amphetamine (actual);

At least 7 G but less than 10 G of LSD;

At least 280 G but less than 400 G of Fentanyl;

At least 70 G but less than 100 G of a Fentanyl Analogue;

At least 700 KG but less than 1,000 KG of Marihuana;

At least 140 KG but less than 200 KG of Hashish;

At least 14 KG but less than 20 KG of Hashish Oil;

At least 700,000  
but less than  
1,000,000 units of  
Ketamine;

At least 700,000  
but less than  
1,000,000 units of  
Schedule I or II  
Depressants;

700,000 or more  
units of Schedule  
III Hydrocodone;

At least 43,750 but  
less than 62,500  
units of  
Flunitrazepam.

**-6**

At least 400 G but  
less than 700 G of  
Heroin;

At least 2 KG but  
less than 3.5 KG of  
Cocaine;

At least 112 G but  
less than 196 G of  
Cocaine Base;

At least 400 G but  
less than 700 G of  
PCP, or at least 40  
G but less than 70  
G of PCP (actual);

**Level 28**

At least 200 G but less than 350 G of Methamphetamine, or at least 20 G but less than 35 G of Methamphetamine (actual), or at least 20 G but less than 35 G of "Ice";

At least 200 G but less than 350 G of Amphetamine, or at least 20 G but less than 35 G of Amphetamine (actual);

At least 4 G but less than 7 G of LSD;

At least 160 G but less than 280 G of Fentanyl;

At least 40 G but less than 70 G of a Fentanyl Analogue;

At least 400 KG but less than 700 KG of Marihuana;

At least 80 KG but less than 140 KG of Hashish;

At least 8 KG but less than 14 KG of Hashish Oil;

At least 400,000  
but less than  
700,000 units of  
Ketamine;

At least 400,000  
but less than  
700,000 units of  
Schedule I or II  
Depressants;

At least 400,000  
but less than  
700,000 units of  
Schedule III  
Hydrocodone;

At least 25,000 but  
less than 43,750  
units of  
Flunitrazepam.

**-7**

At least 100 G but  
less than 400 G of  
Heroin;

At least 500 G but  
less than 2 KG of  
Cocaine;

At least 28 G but  
less than 112 G of  
Cocaine Base;

At least 100 G but  
less than 400 G of  
PCP, or at least 10  
G but less than 40  
G of PCP (actual);

**Level 26**

At least 50 G but less than 200 G of Methamphetamine, or at least 5 G but less than 20 G of Methamphetamine (actual), or at least 5 G but less than 20 G of "Ice";

At least 50 G but less than 200 G of Amphetamine, or at least 5 G but less than 20 G of Amphetamine (actual);

At least 1 G but less than 4 G of LSD;

At least 40 G but less than 160 G of Fentanyl;

At least 10 G but less than 40 G of a Fentanyl Analogue;

At least 100 KG but less than 400 KG of Marihuana;

At least 20 KG but less than 80 KG of Hashish;

At least 2 KG but less than 8 KG of Hashish Oil;

At least 100,000  
but less than  
400,000 units of  
Ketamine;

At least 100,000  
but less than  
400,000 units of  
Schedule I or II  
Depressants;

At least 100,000  
but less than  
400,000 units of  
Schedule III  
Hydrocodone;

At least 6,250 but  
less than 25,000  
units of  
Flunitrazepam.

**-8**

At least 80 G but  
less than 100 G of  
Heroin;

At least 400 G but  
less than 500 G of  
Cocaine;

At least 22.4 G but  
less than 28 G of  
Cocaine Base;

At least 80 G but  
less than 100 G of  
PCP, or at least 8 G  
but less than 10 G  
of PCP (actual);

**Level 24**

At least 40 G but less than 50 G of Methamphetamine, or at least 4 G but less than 5 G of Methamphetamine (actual), or at least 4 G but less than 5 G of "Ice";

At least 40 G but less than 50 G of Amphetamine, or at least 4 G but less than 5 G of Amphetamine (actual);

At least 800 MG but less than 1 G of LSD;

At least 32 G but less than 40 G of Fentanyl;

At least 8 G but less than 10 G of a Fentanyl Analogue;

At least 80 KG but less than 100 KG of Marihuana;

At least 16 KG but less than 20 KG of Hashish;

At least 1.6 KG but less than 2 KG of Hashish Oil;

At least 80,000 but less than 100,000 units of Ketamine;

At least 80,000 but less than 100,000 units of Schedule I or II Depressants;

At least 80,000 but less than 100,000 units of Schedule III Hydrocodone;

At least 5,000 but less than 6,250 units of Flunitrazepam.

**-9**

At least 60 G but less than 80 G of Heroin;

At least 300 G but less than 400 G of Cocaine;

At least 16.8 G but less than 22.4 G of Cocaine Base;

At least 60 G but less than 80 G of PCP, or at least 6 G but less than 8 G of PCP (actual);

**Level 22**

At least 30 G but less than 40 G of Methamphetamine, or at least 3 G but less than 4 G of Methamphetamine (actual), or at least 3 G but less than 4 G of "Ice";

At least 30 G but less than 40 G of Amphetamine, or at least 3 G but less than 4 G of Amphetamine (actual);

At least 600 MG but less than 800 MG of LSD;

At least 24 G but less than 32 G of Fentanyl;

At least 6 G but less than 8 G of a Fentanyl Analogue;

At least 60 KG but less than 80 KG of Marihuana;

At least 12 KG but less than 16 KG of Hashish;

At least 1.2 KG but less than 1.6 KG of Hashish Oil;

At least 60,000 but less than 80,000 units of Ketamine;

At least 60,000 but less than 80,000 units of Schedule I or II Depressants;

At least 60,000 but less than 80,000 units of Schedule III Hydrocodone;

At least 3,750 but less than 5,000 units of Flunitrazepam.

**-10**

At least 40 G but less than 60 G of Heroin;

At least 200 G but less than 300 G of Cocaine;

At least 11.2 G but less than 16.8 G of Cocaine Base;

At least 40 G but less than 60 G of PCP, or at least 4 G but less than 6 G of PCP (actual);

**Level 20**

At least 20 G but less than 30 G of Methamphetamine, or at least 2 G but less than 3 G of Methamphetamine (actual), or at least 2 G but less than 3 G of "Ice";

At least 20 G but less than 30 G of Amphetamine, or at least 2 G but less than 3 G of Amphetamine (actual);

At least 400 MG but less than 600 MG of LSD;

At least 16 G but less than 24 G of Fentanyl;

At least 4 G but less than 6 G of a Fentanyl Analogue;

At least 40 KG but less than 60 KG of Marihuana;

At least 8 KG but less than 12 KG of Hashish;

At least 800 G but less than 1.2 KG of Hashish Oil;

At least 40,000 but less than 60,000 units of Ketamine;

At least 40,000 but less than 60,000 units of Schedule I or II Depressants;

At least 40,000 but less than 60,000 units of Schedule III Hydrocodone;

40,000 or more units of Schedule III substances (except Ketamine or Hydrocodone);

At least 2,500 but less than 3,750 units of Flunitrazepam.

**-11**

At least 20 G but less than 40 G of Heroin;

At least 100 G but less than 200 G of Cocaine;

At least 5.6 G but less than 11.2 G of Cocaine Base;

At least 20 G but less than 40 G of PCP, or at least 2 G but less than 4 G of PCP (actual);

**Level 18**

At least 10 G but less than 20 G of Methamphetamine, or at least 1 G but less than 2 G of Methamphetamine (actual), or at least 1 G but less than 2 G of "Ice";

At least 10 G but less than 20 G of Amphetamine, or at least 1 G but less than 2 G of Amphetamine (actual);

At least 200 MG but less than 400 MG of LSD;

At least 8 G but less than 16 G of Fentanyl;

At least 2 G but less than 4 G of a Fentanyl Analogue;

At least 20 KG but less than 40 KG of Marihuana;

At least 5 KG but less than 8 KG of Hashish;

At least 500 G but less than 800 G of Hashish Oil;

At least 20,000 but less than 40,000 units of Ketamine;

At least 20,000 but less than 40,000 units of Schedule I or II Depressants;

At least 20,000 but less than 40,000 units of Schedule III Hydrocodone;

At least 20,000 but less than 40,000 units of Schedule III substances (except Ketamine or Hydrocodone);

At least 1,250 but less than 2,500 units of Flunitrazepam.

**-12**

At least 10 G but less than 20 G of Heroin;

At least 50 G but less than 100 G of Cocaine;

At least 2.8 G but less than 5.6 G of Cocaine Base;

At least 10 G but less than 20 G of PCP, or at least 1 G but less than 2 G of PCP (actual);

**Level 16**

At least 5 G but less than 10 G of Methamphetamine, or at least 500 MG but less than 1 G of Methamphetamine (actual), or at least 500 MG but less than 1 G of "Ice";

At least 5 G but less than 10 G of Amphetamine, or at least 500 MG but less than 1 G of Amphetamine (actual);

At least 100 MG but less than 200 MG of LSD;

At least 4 G but less than 8 G of Fentanyl;

At least 1 G but less than 2 G of a Fentanyl Analogue;

At least 10 KG but less than 20 KG of Marihuana;

At least 2 KG but less than 5 KG of Hashish;

At least 200 G but less than 500 G of Hashish Oil;

At least 10,000 but less than 20,000 units of Ketamine;

At least 10,000 but less than 20,000 units of Schedule I or II Depressants;

At least 10,000 but less than 20,000 units of Schedule III Hydrocodone;

At least 10,000 but less than 20,000 units of Schedule III substances (except Ketamine or Hydrocodone);

At least 625 but less than 1,250 units of Flunitrazepam.

**-13**

At least 5 G but less than 10 G of Heroin;

At least 25 G but less than 50 G of Cocaine;

At least 1.4 G but less than 2.8 G of Cocaine Base;

**Level 14**

At least 5 G but less than 10 G of PCP, or at least 500 MG but less than 1 G of PCP (actual);

At least 2.5 G but less than 5 G of Methamphetamine, or at least 250 MG but less than 500 MG of Methamphetamine (actual), or at least 250 MG but less than 500 MG of "Ice";

At least 2.5 G but less than 5 G of Amphetamine, or at least 250 MG but less than 500 MG of Amphetamine (actual);

At least 50 MG but less than 100 MG of LSD;

At least 2 G but less than 4 G of Fentanyl;

At least 500 MG but less than 1 G of a Fentanyl Analogue;

At least 5 KG but less than 10 KG of Marihuana;

At least 1 KG but less than 2 KG of Hashish;

At least 100 G but less than 200 G of Hashish Oil;

At least 5,000 but less than 10,000 units of Ketamine;

At least 5,000 but less than 10,000 units of Schedule I or II Depressants;

At least 5,000 but less than 10,000 units of Schedule III Hydrocodone;

At least 5,000 but less than 10,000 units of Schedule III substances (except Ketamine or Hydrocodone);

At least 312 but less than 625 units of Flunitrazepam.

**-14**

Less than 5 G of heroin;

Less than 25 G Cocaine;

**Level 12**

Less than 1.4 G of  
Cocaine Base;

Less than 5 G of  
PCP, or less than  
500 MG of PCP  
(actual);

Less than 2.5 G of  
Methamphetamine,  
or less than 250  
MG of  
Methamphetamine  
(actual), or less  
than 250 MG of  
"Ice";

Less than 2.5 G of  
Amphetamine, or  
less than 250 MG  
of Amphetamine  
(actual);

Less than 50 MG of  
LSD;

Less than 2 G of  
Fentanyl;

Less than 500 MG  
of a Fentanyl  
Analogue;

At least 2.5 KG but  
less than 5 KG of  
Marihuana;

At least 500 G but  
less than 1 KG of  
Hashish;

At least 50 G but  
less than 100 G of  
Hashish Oil;

At least 2,500 but less than 5,000 units of Ketamine;

At least 2,500 but less than 5,000 units of Schedule I or II Depressants;

At least 2,500 but less than 5,000 units of Schedule III Hydrocodone;

At least 2,500 but less than 5,000 units of Schedule III substances (except Ketamine or Hydrocodone);

At least 156 but less than 312 units of Flunitrazepam;

40,000 or more units of Schedule IV substances (except Flunitrazepam).

**-15**

At least 1 KG but less than 2.5 KG of Marihuana;

At least 200 G but less than 500 G of Hashish;

At least 20 G but less than 50 G of Hashish Oil;

**Level 10**

At least 1,000 units but less than 2,500 units of Ketamine;

At least 1,000 but less than 2,500 units of Schedule I or II Depressants;

At least 1,000 but less than 2,500 units of Schedule III Hydrocodone;

At least 1,000 but less than 2,500 units of Schedule III substances (except Ketamine or Hydrocodone);

At least 62 but less than 156 units of Flunitrazepam;

At least 16,000 but less than 40,000 units of Schedule IV substances (except Flunitrazepam).

**-16**

At least 250 G but less than 1 KG of Marihuana;

At least 50 G but less than 200 G of Hashish;

**Level 8**

At least 5 G but less than 20 G of Hashish Oil;

At least 250 units but less than 1,000 units of Ketamine;

At least 250 but less than 1,000 units of Schedule I or II Depressants;

At least 250 but less than 1,000 units of Schedule III Hydrocodone;

At least 250 but less than 1,000 units of Schedule III substances (except Ketamine or Hydrocodone);

Less than 62 units of Flunitrazepam;

At least 4,000 but less than 16,000 units of Schedule IV substances (except Flunitrazepam);

40,000 or more units of Schedule V substances.

**-17**

Less than 250 G of Marihuana;

Less than 50 G of Hashish;

**Level 6**

Less than 5 G of  
Hashish Oil;

Less than 250  
units of Ketamine;

Less than 250  
units of Schedule I  
or II Depressants;

Less than 250  
units of Schedule  
III Hydrocodone;

Less than 250  
units of Schedule  
III substances  
(except Ketamine  
or Hydrocodone);

Less than 4,000  
units of Schedule  
IV substances  
(except  
Flunitrazepam);

Less than 40,000  
units of Schedule V  
substances.

## **United States Sentencing Guideline § 4B1.1. Career Offender**

**(a)** A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

**(b)** Except as provided in subsection (c), if the offense level for a career offender from the table in this subsection is greater than the offense level otherwise applicable, the offense level from the table in this subsection shall apply. A career offender's criminal history category in every case under this subsection shall be Category VI.

<b>Offense Statutory Maximum</b>	<b>Offense Level</b>
-1 Life	37
-2 25 years or more	34
-3 20 years or more, but less than 25 years	32
-4 15 years or more, but less than 20 years	29

-5	10 years or more, but less than 15 years	24
-6	5 years or more, but less than 10 years	17
-7	More than 1 year, but less than 5 years	12

If an adjustment from § 3E1.1 (Acceptance of Responsibility) applies, decrease the offense level by the number of levels corresponding to that adjustment.

**(c)** If the defendant is convicted of [18 U.S.C. § 924\(c\)](#) or [§ 929\(a\)](#), and the defendant is determined to be a career offender under subsection (a), the applicable guideline range shall be determined as follows:

**(1)** If the only count of conviction is [18 U.S.C. § 924\(c\)](#) or [§ 929\(a\)](#), the applicable guideline range shall be determined using the table in subsection (c)(3).

**(2)** In the case of multiple counts of conviction in which at least one of the counts is a conviction other than a conviction for [18 U.S.C. § 924\(c\)](#) or [§ 929\(a\)](#), the guideline range shall be the greater of--

**(A)** the guideline range that results by adding the mandatory minimum consecutive penalty required by the [18 U.S.C. § 924\(c\)](#) or [§ 929\(a\)](#) count(s) to the minimum and the maximum of the otherwise applicable guideline range determined for the count(s) of conviction other than the [18 U.S.C. § 924\(c\)](#) or [§ 929\(a\)](#) count(s); and

**(B)** the guideline range determined using the table in subsection (c)(3).

**(3)** Career Offender Table for [18 U.S.C. § 924\(c\)](#) or [§ 929\(a\)](#) Offenders

[§ 3E1.1](#) Reduction Guideline Range for the [18 U.S.C. § 924\(c\)](#) or [§ 929\(a\)](#) Count(s)

No reduction	360-life
2-level reduction	292-365
3-level reduction	262-327.

<[Commentary to Guideline is located in Historical Note field. The following credit reflects amendments to both Guideline and Commentary.]>

CREDIT(S)

(Effective November 1, 1987; amended effective January 15, 1988; November 1, 1989; November 1, 1992; November 1, 1994; November 1, 1995; November 1, 1997; November 1, 2002; November 1, 2011.)

COMMENTARY

<***Application Notes:***>

<**1.** "Crime of violence," "controlled substance offense," and "two prior felony convictions" are defined in § 4B1.2.>

<**2.** "Offense Statutory Maximum," for the purposes of this guideline, refers to the maximum term of

imprisonment authorized for the offense of conviction that is a crime of violence or controlled substance offense, including any increase in that maximum term under a sentencing enhancement provision that applies because of the defendant's prior criminal record (such sentencing enhancement provisions are contained, for example, in [21 U.S.C. § 841\(b\)\(1\)\(A\)](#), (B), (C), and (D)). For example, in a case in which the statutory maximum term of imprisonment under [21 U.S.C. § 841\(b\)\(1\)\(C\)](#) is increased from twenty years to thirty years because the defendant has one or more qualifying prior drug convictions, the "Offense Statutory Maximum" for that defendant for the purposes of this guideline is thirty years and not twenty years. If more than one count of conviction is of a crime of violence or controlled substance offense, use the maximum authorized term of imprisonment for the count that has the greatest offense statutory maximum.>

**<3. Application of Subsection (c).-->**

**<(A) In General.--**Subsection (c) applies in any case in which the defendant (i) was convicted of violating [18 U.S.C. 924\(c\)](#) or [929\(a\)](#); and (ii) as a result of that conviction (alone or in addition to another offense of conviction), is determined to be a career offender under § 4B1.1(a).>

**<(B) Subsection (c)(2).--**To determine the greater guideline range under subsection (c)(2), the court shall use the guideline range with the highest minimum term of imprisonment.>

**<(C) "Otherwise Applicable Guideline Range".--**For purposes of subsection (c)(2)(A), "otherwise applicable

guideline range' for the count(s) of conviction other than the [18 U.S.C. 924\(c\)](#) or [18 U.S.C. 929\(a\)](#) count(s) is determined as follows:>

<**(i)** If the count(s) of conviction other than the [18 U.S.C. 924\(c\)](#) or [18 U.S.C. 929\(a\)](#) count(s) does not qualify the defendant as a career offender, the otherwise applicable guideline range for that count(s) is the guideline range determined using: (I) the Chapter Two and Three offense level for that count(s); and (II) the appropriate criminal history category determined under §§ 4A1.1 (Criminal History Category) and 4A1.2 (Definitions and Instructions for Computing Criminal History).>

<**(ii)** If the count(s) of conviction other than the [18 U.S.C. 924\(c\)](#) or [18 U.S.C. 929\(a\)](#) count(s) qualifies the defendant as a career offender, the otherwise applicable guideline range for that count(s) is the guideline range determined for that count(s) under § 4B1.1(a) and (b).>

<**(D) Imposition of Consecutive Term of Imprisonment.**--In a case involving multiple counts, the sentence shall be imposed according to the rules in subsection (e) of § 5G1.2 (Sentencing on Multiple Counts of Conviction).>

<**(E) Example.**--The following example illustrates the application of subsection (c)(2) in a multiple count situation:>

<The defendant is convicted of one count of violating [18 U.S.C. 924\(c\)](#) for possessing a firearm in furtherance of a drug trafficking offense (5 year mandatory minimum),

and one count of violating [21 U.S.C. 841\(b\)\(1\)\(B\)](#) (5 year mandatory minimum, 40 year statutory maximum). Applying subsection (c)(2)(A), the court determines that the drug count (without regard to the [18 U.S.C. 924\(c\)](#) count) qualifies the defendant as a career offender under § 4B1.1(a). Under § 4B1.1(a), the otherwise applicable guideline range for the drug count is 188-235 months (using offense level 34 (because the statutory maximum for the drug count is 40 years), minus 3 levels for acceptance of responsibility, and criminal history category VI). The court adds 60 months (the minimum required by [18 U.S.C. 924\(c\)](#)) to the minimum and the maximum of that range, resulting in a guideline range of 248-295 months. Applying subsection (c)(2)(B), the court then determines the career offender guideline range from the table in subsection (c)(3) is 262-327 months. The range with the greatest minimum, 262-327 months, is used to impose the sentence in accordance with § 5G1.2(e).>

## **United States Sentencing Guideline § 4B1.2. Definitions of Terms Used in Section 4B1.1**

**(a)** The term “crime of violence” means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that--

**(1)** has as an element the use, attempted use, or threatened use of physical force against the person of another, or

**(2)** is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

**(b)** The term “controlled substance offense” means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

**(c)** The term “two prior felony convictions” means (1) the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (i.e., two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance

offense), and (2) the sentences for at least two of the aforementioned felony convictions are counted separately under the provisions of [§ 4A1.1\(a\)](#), [\(b\)](#), or [\(c\)](#). The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere.

<[Commentary to Guideline is located in Historical Note field. The following credit reflects amendments to both Guideline and Commentary.]>

### CREDIT(S)

(Effective November 1, 1987; amended effective January 15, 1988; November 1, 1989; November 1, 1991; November 1, 1992; November 1, 1995; November 1, 1997; November 1, 2000; November 1, 2002; November 1, 2004; November 1, 2007; November 1, 2009.)

### COMMENTARY

#### <***Application Notes:***>

<**1.** For purposes of this guideline--“Crime of violence” and “controlled substance offense” include the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.>

<“Crime of violence” includes murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension of credit, and burglary of a dwelling. Other offenses are included as “crimes of violence” if (A) that offense has as an element the use, attempted use, or threatened use of

physical force against the person of another, or (B) the conduct set forth (i.e., expressly charged) in the count of which the defendant was convicted involved use of explosives (including any explosive material or destructive device) or, by its nature, presented a serious potential risk of physical injury to another.>

<"Crime of violence" does not include the offense of unlawful possession of a firearm by a felon, unless the possession was of a firearm described in [26 U.S.C. § 5845\(a\)](#). Where the instant offense is the unlawful possession of a firearm by a felon, § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) provides an increase in offense level if the defendant had one or more prior felony convictions for a crime of violence or controlled substance offense; and, if the defendant is sentenced under the provisions of [18 U.S.C. § 924\(e\)](#), § 4B1.4 (Armed Career Criminal) will apply.>

<Unlawfully possessing a listed chemical with intent to manufacture a controlled substance ([21 U.S.C. § 841\(c\)\(1\)](#)) is a "controlled substance offense.">

<Unlawfully possessing a firearm described in [26 U.S.C. § 5845\(a\)](#) (e.g., a sawed-off shotgun or sawed-off rifle, silencer, bomb, or machine gun) is a "crime of violence".>

<Unlawfully possessing a prohibited flask or equipment with intent to manufacture a controlled substance ([21 U.S.C. § 843\(a\)\(6\)](#)) is a "controlled substance offense.">

<Maintaining any place for the purpose of facilitating a drug offense ([21 U.S.C. § 856](#)) is a “controlled substance offense” if the offense of conviction established that the underlying offense (the offense facilitated) was a “controlled substance offense.”>

<Using a communications facility in committing, causing, or facilitating a drug offense ([21 U.S.C. § 843\(b\)](#)) is a “controlled substance offense” if the offense of conviction established that the underlying offense (the offense committed, caused, or facilitated) was a “controlled substance offense.”>

<A violation of [18 U.S.C. 924\(c\)](#) or [929\(a\)](#) is a “crime of violence” or a “controlled substance offense” if the offense of conviction established that the underlying offense was a “crime of violence” or a “controlled substance offense”. (Note that in the case of a prior [18 U.S.C. 924\(c\)](#) or [929\(a\)](#) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be counted as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)>

<“Prior felony conviction” means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen or older is an adult conviction. A conviction for an offense committed prior to age eighteen is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (e.g., a

federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).>

<**2.** Section 4B1.1 (Career Offender) expressly provides that the instant and prior offenses must be crimes of violence or controlled substance offenses of which the defendant was convicted. Therefore, in determining whether an offense is a crime of violence or controlled substance for the purposes of § 4B1.1 (Career Offender), the offense of conviction (i.e., the conduct of which the defendant was convicted) is the focus of inquiry.>

<**3.** The provisions of § 4A1.2 (Definitions and Instructions for Computing Criminal History) are applicable to the counting of convictions under § 4B1.1.>

**United States Sentencing Guideline § 2G2.2.  
Trafficking in Material Involving the Sexual  
Exploitation of a Minor; Receiving, Transporting,  
Shipping, Soliciting, or Advertising Material  
Involving the Sexual Exploitation of a Minor;  
Possessing Material Involving the Sexual  
Exploitation of a Minor with Intent to Traffic;  
Possessing Material Involving the Sexual  
Exploitation of a Minor**

**(a)** Base Offense Level:

**(1)** 18, if the defendant is convicted of [18 U.S.C. § 1466A\(b\)](#), [§ 2252\(a\)\(4\)](#), [§ 2252A\(a\)\(5\)](#), or [§ 2252A\(a\)\(7\)](#).

**(2)** 22, otherwise.

**(b)** Specific Offense Characteristics

**(1)** If (A) subsection (a)(2) applies; (B) the defendant's conduct was limited to the receipt or solicitation of material involving the sexual exploitation of a minor; and (C) the defendant did not intend to traffic in, or distribute, such material, decrease by 2 levels.

**(2)** If the material involved a prepubescent minor or a minor who had not attained the age of 12 years, increase by 2 levels.

**(3)** (Apply the greatest) If the offense involved:

**(A)** Distribution for pecuniary gain, increase by the number of levels from the table in [§ 2B1.1](#) (Theft,

Property Destruction, and Fraud) corresponding to the retail value of the material, but by not less than 5 levels.

**(B)** Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain, increase by 5 levels.

**(C)** Distribution to a minor, increase by 5 levels.

**(D)** Distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity, other than illegal activity covered under subdivision (E), increase by 6 levels.

**(E)** Distribution to a minor that was intended to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct, increase by 7 levels.

**(F)** Distribution other than distribution described in subdivisions (A) through (E), increase by 2 levels.

**(4)** If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by 4 levels.

**(5)** If the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor, increase by 5 levels.

**(6)** If the offense involved the use of a computer or an interactive computer service for the possession, transmission, receipt, or distribution of the material, or

for accessing with intent to view the material, increase by 2 levels.

**(7)** If the offense involved--

**(A)** at least 10 images, but fewer than 150, increase by 2 levels;

**(B)** at least 150 images, but fewer than 300, increase by 3 levels;

**(C)** at least 300 images, but fewer than 600, increase by 4 levels; and

**(D)** 600 or more images, increase by 5 levels.

**(c)** Cross Reference

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, apply [§ 2G2.1](#) (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), if the resulting offense level is greater than that determined above.

## **United States Sentencing Guideline §2L1.2. Unlawfully Entering or Remaining in the United States**

**(a)** Base Offense Level: 8

**(b)** Specific Offense Characteristic

**(1)** Apply the Greatest:

If the defendant previously was deported, or unlawfully remained in the United States, after--

**(A)** a conviction for a felony that is (i) a drug trafficking offense for which the sentence imposed exceeded 13 months; (ii) a crime of violence; (iii) a firearms offense; (iv) a child pornography offense; (v) a national security or terrorism offense; (vi) a human trafficking offense; or (vii) an alien smuggling offense, increase by 16 levels if the conviction receives criminal history points under Chapter Four or by 12 levels if the conviction does not receive criminal history points;

**(B)** a conviction for a felony drug trafficking offense for which the sentence imposed was 13 months or less, increase by 12 levels if the conviction receives criminal history points under Chapter Four or by 8 levels if the conviction does not receive criminal history points;

**(C)** a conviction for an aggravated felony, increase by 8 levels;

**(D)** a conviction for any other felony, increase by 4 levels; or

**(E)** three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses, increase by 4 levels.

## **United States Sentencing Guideline §4A1.1. Criminal History Category**

The total points from subsections (a) through (e) determine the criminal history category in the Sentencing Table in Chapter Five, Part A.

**(a)** Add 3 points for each prior sentence of imprisonment exceeding one year and one month.

**(b)** Add 2 points for each prior sentence of imprisonment of at least sixty days not counted in (a).

**(c)** Add 1 point for each prior sentence not counted in (a) or (b), up to a total of 4 points for this subsection.

**(d)** Add 2 points if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.

**(e)** Add 1 point for each prior sentence resulting from a conviction of a crime of violence that did not receive any points under (a), (b), or (c) above because such sentence was counted as a single sentence, up to a total of 3 points for this subsection.

## **United States Sentencing Guideline § 4A1.2. Definitions and Instructions for Computing Criminal History**

### **(a) Prior Sentence**

**(1)** The term “prior sentence” means any sentence previously imposed upon adjudication of guilt, whether by guilty plea, trial, or plea of nolo contendere, for conduct not part of the instant offense.

**(2)** If the defendant has multiple prior sentences, determine whether those sentences are counted separately or as a single sentence. Prior sentences always are counted separately if the sentences were imposed for offenses that were separated by an intervening arrest (i.e., the defendant is arrested for the first offense prior to committing the second offense). If there is no intervening arrest, prior sentences are counted separately unless (A) the sentences resulted from offenses contained in the same charging instrument; or (B) the sentences were imposed on the same day. Count any prior sentence covered by (A) or (B) as a single sentence. See also [§ 4A1.1\(e\)](#).

For purposes of applying [§ 4A1.1\(a\)](#), [\(b\)](#), and [\(c\)](#), if prior sentences are counted as a single sentence, use the longest sentence of imprisonment if concurrent sentences were imposed. If consecutive sentences were imposed, use the aggregate sentence of imprisonment.

**(3)** A conviction for which the imposition or execution of sentence was totally suspended or stayed shall be counted as a prior sentence under [§ 4A1.1\(c\)](#).

**(4)** Where a defendant has been convicted of an offense, but not yet sentenced, such conviction shall be counted as if it constituted a prior sentence under [§ 4A1.1\(c\)](#) if a sentence resulting from that conviction otherwise would be countable. In the case of a conviction for an offense set forth in § 4A1.2(c)(1), apply this provision only where the sentence for such offense would be countable regardless of type or length.

“Convicted of an offense,” for the purposes of this provision, means that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere.

### **(b) Sentence of Imprisonment Defined**

**(1)** The term “sentence of imprisonment” means a sentence of incarceration and refers to the maximum sentence imposed.

**(2)** If part of a sentence of imprisonment was suspended, “sentence of imprisonment” refers only to the portion that was not suspended.

### **(c) Sentences Counted and Excluded**

Sentences for all felony offenses are counted. Sentences for misdemeanor and petty offenses are counted, except as follows:

**(1)** Sentences for the following prior offenses and offenses similar to them, by whatever name they are known, are counted only if (A) the sentence was a term

of probation of more than one year or a term of imprisonment of at least thirty days, or (B) the prior offense was similar to an instant offense:

Careless or reckless driving

Contempt of court

Disorderly conduct or disturbing the peace

Driving without a license or with a revoked or suspended license

False information to a police officer

Gambling

Hindering or failure to obey a police officer

Insufficient funds check

Leaving the scene of an accident

Non-support

Prostitution

Resisting arrest

Trespassing.

**(2)** Sentences for the following prior offenses and offenses similar to them, by whatever name they are known, are never counted:

Fish and game violations

Hitchhiking

Juvenile status offenses and truancy

Local ordinance violations (except those violations that are also violations under state criminal law)

Loitering

Minor traffic infractions (e.g., speeding)

Public intoxication

Vagrancy.

#### **(d) Offenses Committed Prior to Age Eighteen**

**(1)** If the defendant was convicted as an adult and received a sentence of imprisonment exceeding one year and one month, add 3 points under [§ 4A1.1\(a\)](#) for each such sentence.

**(2)** In any other case,

**(A)** add 2 points under [§ 4A1.1\(b\)](#) for each adult or juvenile sentence to confinement of at least sixty days if the defendant was released from such confinement within five years of his commencement of the instant offense;

**(B)** add 1 point under [§ 4A1.1\(c\)](#) for each adult or juvenile sentence imposed within five years of the

defendant's commencement of the instant offense not covered in (A).

### **(e) Applicable Time Period**

**(1)** Any prior sentence of imprisonment exceeding one year and one month that was imposed within fifteen years of the defendant's commencement of the instant offense is counted. Also count any prior sentence of imprisonment exceeding one year and one month, whenever imposed, that resulted in the defendant being incarcerated during any part of such fifteen-year period.

**(2)** Any other prior sentence that was imposed within ten years of the defendant's commencement of the instant offense is counted.

**(3)** Any prior sentence not within the time periods specified above is not counted.

**(4)** The applicable time period for certain sentences resulting from offenses committed prior to age eighteen is governed by § 4A1.2(d)(2).

### **(f) Diversionary Dispositions**

Diversion from the judicial process without a finding of guilt (e.g., deferred prosecution) is not counted. A diversionary disposition resulting from a finding or admission of guilt, or a plea of nolo contendere, in a judicial proceeding is counted as a sentence under [§ 4A1.1\(c\)](#) even if a conviction is not formally entered, except that diversion from juvenile court is not counted.

### **(g) Military Sentences**

Sentences resulting from military offenses are counted if imposed by a general or special court martial. Sentences imposed by a summary court martial or Article 15 proceeding are not counted.

### **(h) Foreign Sentences**

Sentences resulting from foreign convictions are not counted, but may be considered under [§ 4A1.3](#) (Adequacy of Criminal History Category).

### **(i) Tribal Court Sentences**

Sentences resulting from tribal court convictions are not counted, but may be considered under [§ 4A1.3](#) (Adequacy of Criminal History Category).

### **(j) Expunged Convictions**

Sentences for expunged convictions are not counted, but may be considered under [§ 4A1.3](#) (Adequacy of Criminal History Category).

### **(k) Revocations of Probation, Parole, Mandatory Release, or Supervised Release**

**(1)** In the case of a prior revocation of probation, parole, supervised release, special parole, or mandatory release, add the original term of imprisonment to any term of imprisonment imposed upon revocation. The resulting total is used to compute the criminal history points for [§ 4A1.1\(a\)](#), [\(b\)](#), or [\(c\)](#), as applicable.

**(2)** Revocation of probation, parole, supervised release, special parole, or mandatory release may affect the time period under which certain sentences are counted as provided in § 4A1.2(d)(2) and (e). For the purposes of determining the applicable time period, use the following: (A) in the case of an adult term of imprisonment totaling more than one year and one month, the date of last release from incarceration on such sentence (see § 4A1.2(e)(1)); (B) in the case of any other confinement sentence for an offense committed prior to the defendant's eighteenth birthday, the date of the defendant's last release from confinement on such sentence (see § 4A1.2(d)(2)(A)); and (C) in any other case, the date of the original sentence (see § 4A1.2(d)(2)(B) and (e)(2)).

### **(l) Sentences on Appeal**

Prior sentences under appeal are counted except as expressly provided below. In the case of a prior sentence, the execution of which has been stayed pending appeal, [§ 4A1.1\(a\)](#), [\(b\)](#), [\(c\)](#), [\(d\)](#), and [\(e\)](#) shall apply as if the execution of such sentence had not been stayed.

### **(m) Effect of a Violation Warrant**

For the purposes of [§ 4A1.1\(d\)](#), a defendant who commits the instant offense while a violation warrant from a prior sentence is outstanding (e.g., a probation, parole, or supervised release violation warrant) shall be deemed to be under a criminal justice sentence if that sentence is otherwise countable, even if that sentence would have expired absent such warrant.

## **(n) Failure to Report for Service of Sentence of Imprisonment**

For the purposes of [§ 4A1.1\(d\)](#), failure to report for service of a sentence of imprisonment shall be treated as an escape from such sentence.

## **(o) Felony Offense**

For the purposes of § 4A1.2(c), a “felony offense” means any federal, state, or local offense punishable by death or a term of imprisonment exceeding one year, regardless of the actual sentence imposed.

## **(p) Crime of Violence Defined**

For the purposes of [§ 4A1.1\(e\)](#), the definition of “crime of violence” is that set forth in [§ 4B1.2\(1\)](#).

## COMMENTARY

### **<Application Notes:>**

**<1. Prior Sentence.** “Prior sentence” means a sentence imposed prior to sentencing on the instant offense, other than a sentence for conduct that is part of the instant offense. See § 4A1.2(a). A sentence imposed after the defendant's commencement of the instant offense, but prior to sentencing on the instant offense, is a prior sentence if it was for conduct other than conduct that was part of the instant offense. Conduct that is part of the instant offense means conduct that is relevant

conduct to the instant offense under the provisions of section 1B1.3 (Relevant Conduct).>

<Under § 4A1.2(a)(4), a conviction for which the defendant has not yet been sentenced is treated as if it were a prior sentence under § 4A1.1(c) if a sentence resulting from such conviction otherwise would have been counted. In the case of an offense set forth in § 4A1.2(c)(1) (which lists certain misdemeanor and petty offenses), a conviction for which the defendant has not yet been sentenced is treated as if it were a prior sentence under § 4A1.2(a)(4) only where the offense is similar to the instant offense (because sentences for other offenses set forth in § 4A1.2(c)(1) are counted only if they are of a specified type and length).>

**<2. Sentences of Imprisonment.** To qualify as a sentence of imprisonment, the defendant must have actually served a period of imprisonment on such sentence (or, if the defendant escaped, would have served time). See §§ 4A1.2(a)(3) and (b)(2). For the purposes of applying § 4A1.1(a), (b), or (c), the length of a sentence of imprisonment is the stated maximum (e.g., in the case of a determinate sentence of five years, the stated maximum is five years; in the case of an indeterminate sentence of one to five years, the stated maximum is five years; in the case of an indeterminate sentence for a term not to exceed five years, the stated maximum is five years; in the case of an indeterminate sentence for a term not to exceed the defendant's twenty-first birthday, the stated maximum is the amount of time in pre-trial detention plus the amount of time between the date of sentence and the defendant's twenty-first birthday). That is, criminal history points are

based on the sentence pronounced, not the length of time actually served. See § 4A1.2(b)(1) and (2). A sentence of probation is to be treated as a sentence under § 4A1.1(c) unless a condition of probation requiring imprisonment of at least sixty days was imposed.>

**<3. Upward Departure Provision.**--Counting multiple prior sentences as a single sentence may result in a criminal history score that underrepresents the seriousness of the defendant's criminal history and the danger that the defendant presents to the public. In such a case, an upward departure may be warranted. For example, if a defendant was convicted of a number of serious non-violent offenses committed on different occasions, and the resulting sentences were counted as a single sentence because either the sentences resulted from offenses contained in the same charging instrument or the defendant was sentenced for these offenses on the same day, the assignment of a single set of points may not adequately reflect the seriousness of the defendant's criminal history or the frequency with which the defendant has committed crimes.>

**<4. Sentences Imposed in the Alternative.** A sentence which specifies a fine or other non-incarcerative disposition as an alternative to a term of imprisonment (e.g., \$1,000 fine or ninety days' imprisonment) is treated as a non-imprisonment sentence.>

**<5. Sentences for Driving While Intoxicated or Under the Influence.** Convictions for driving while intoxicated or under the influence (and similar offenses by whatever name they are known) are counted. Such

offenses are not minor traffic infractions within the meaning of § 4A1.2(c).>

**<6. Reversed, Vacated, or Invalidated Convictions.**

Sentences resulting from convictions that (A) have been reversed or vacated because of errors of law or because of subsequently-discovered evidence exonerating the defendant, or (B) have been ruled constitutionally invalid in a prior case are not to be counted. With respect to the current sentencing proceeding, this guideline and commentary do not confer upon the defendant any right to attack collaterally a prior conviction or sentence beyond any such rights otherwise recognized in law (e.g., [21 U.S.C. § 851](#) expressly provides that a defendant may collaterally attack certain prior convictions).>

<Nonetheless, the criminal conduct underlying any conviction that is not counted in the criminal history score may be considered pursuant to § 4A1.3 (Adequacy of Criminal History Category).>

**<7. Offenses Committed Prior to Age Eighteen.**

Section 4A1.2(d) covers offenses committed prior to age eighteen. Attempting to count every juvenile adjudication would have the potential for creating large disparities due to the differential availability of records. Therefore, for offenses committed prior to age eighteen, only those that resulted in adult sentences of imprisonment exceeding one year and one month, or resulted in imposition of an adult or juvenile sentence or release from confinement on that sentence within five years of the defendant's commencement of the instant offense are counted. To avoid disparities from jurisdiction to jurisdiction in the age at which a defendant is considered a "juvenile," this

provision applies to all offenses committed prior to age eighteen.>

**<8. Applicable Time Period.** Section 4A1.2(d)(2) and (e) establishes the time period within which prior sentences are counted. As used in § 4A1.2(d)(2) and (e), the term “commencement of the instant offense” includes any relevant conduct. See § 1B1.3 (Relevant Conduct). If the court finds that a sentence imposed outside this time period is evidence of similar, or serious dissimilar, criminal conduct, the court may consider this information in determining whether an upward departure is warranted under § 4A1.3 (Adequacy of Criminal History Category).>

**<9. Diversionary Dispositions.** Section 4A1.2(f) requires counting prior adult diversionary dispositions if they involved a judicial determination of guilt or an admission of guilt in open court. This reflects a policy that defendants who receive the benefit of a rehabilitative sentence and continue to commit crimes should not be treated with further leniency.>

**<10. Convictions Set Aside or Defendant Pardoned.** A number of jurisdictions have various procedures pursuant to which previous convictions may be set aside or the defendant may be pardoned for reasons unrelated to innocence or errors of law, e.g., in order to restore civil rights or to remove the stigma associated with a criminal conviction. Sentences resulting from such convictions are to be counted. However, expunged convictions are not counted. § 4A1.2(j).>

**<11. Revocations to be Considered.** Section 4A1.2(k) covers revocations of probation and other conditional sentences where the original term of imprisonment imposed, if any, did not exceed one year and one month. Rather than count the original sentence and the resentence after revocation as separate sentences, the sentence given upon revocation should be added to the original sentence of imprisonment, if any, and the total should be counted as if it were one sentence. By this approach, no more than three points will be assessed for a single conviction, even if probation or conditional release was subsequently revoked. If the sentence originally imposed, the sentence imposed upon revocation, or the total of both sentences exceeded one year and one month, the maximum three points would be assigned. If, however, at the time of revocation another sentence was imposed for a new criminal conviction, that conviction would be computed separately from the sentence imposed for the revocation.>

<Where a revocation applies to multiple sentences, and such sentences are counted separately under § 4A1.2(a) (2), add the term of imprisonment imposed upon revocation to the sentence that will result in the greatest increase in criminal history points. Example: A defendant was serving two probationary sentences, each counted separately under § 4A1.2(a)(2); probation was revoked on both sentences as a result of the same violation conduct; and the defendant was sentenced to a total of 45 days of imprisonment. If one sentence had been a “straight” probationary sentence and the other had been a probationary sentence that had required service of 15 days of imprisonment, the revocation term of imprisonment (45 days) would be added to the

probationary sentence that had the 15-day term of imprisonment. This would result in a total of 2 criminal history points under § 4A1.1(b) (for the combined 60-day term of imprisonment) and 1 criminal history point under § 4A1.1(c) (for the other probationary sentence).>

**<12. Application of Subsection (c).-->**

**<(A) In General.--**In determining whether an unlisted offense is similar to an offense listed in subsection (c)(1) or (c)(2), the court should use a common sense approach that includes consideration of relevant factors such as (i) a comparison of punishments imposed for the listed and unlisted offenses; (ii) the perceived seriousness of the offense as indicated by the level of punishment; (iii) the elements of the offense; (iv) the level of culpability involved; and (v) the degree to which the commission of the offense indicates a likelihood of recurring criminal conduct.>

**<(B) Local Ordinance Violations.--** A number of local jurisdictions have enacted ordinances covering certain offenses (e.g., larceny and assault misdemeanors) that are also violations of state criminal law. This enables a local court (e.g., a municipal court) to exercise jurisdiction over such offenses. Such offenses are excluded from the definition of local ordinance violations in § 4A1.2(c)(2) and, therefore, sentences for such offenses are to be treated as if the defendant had been convicted under state law.>

**<(C) Insufficient Funds Check.--** “Insufficient funds check,” as used in § 4A1.2(c)(1), does not include any conviction establishing that the defendant used a false name or non-existent account.>

*< **Background:** Prior sentences, not otherwise excluded, are to be counted in the criminal history score, including uncounseled misdemeanor sentences where imprisonment was not imposed.>*

## **United States Sentencing Guideline § 7B1.1. Classifications of Violations (Policy Statement)**

**(a)** There are three grades of probation and supervised release violations:

**(1) Grade A Violations**--conduct constituting (A) a federal, state, or local offense punishable by a term of imprisonment exceeding one year that (i) is a crime of violence, (ii) is a controlled substance offense, or (iii) involves possession of a firearm or destructive device of a type described in [26 U.S.C. § 5845\(a\)](#); or (B) any other federal, state, or local offense punishable by a term of imprisonment exceeding twenty years;

**(2) Grade B Violations**--conduct constituting any other federal, state, or local offense punishable by a term of imprisonment exceeding one year;

**(3) Grade C Violations**--conduct constituting (A) a federal, state, or local offense punishable by a term of imprisonment of one year or less; or (B) a violation of any other condition of supervision.

**(b)** Where there is more than one violation of the conditions of supervision, or the violation includes conduct that constitutes more than one offense, the grade of the violation is determined by the violation having the most serious grade.

COMMENTARY

**<Application Notes:>**

<**1.** Under [18 U.S.C. §§ 3563\(a\)\(1\)](#) and [3583\(d\)](#), a mandatory condition of probation and supervised release is that the defendant not commit another federal, state, or local crime. A violation of this condition may be charged whether or not the defendant has been the subject of a separate federal, state, or local prosecution for such conduct. The grade of violation does not depend upon the conduct that is the subject of criminal charges or of which the defendant is convicted in a criminal proceeding. Rather, the grade of the violation is to be based on the defendant's actual conduct.>

<**2.** "Crime of violence" is defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1). See § 4B1.2(a) and Application Note 1 of the Commentary to § 4B1.2.>

<**3.** "Controlled substance offense" is defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1). See § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2.>

<**4.** A "firearm or destructive device of a type described in [26 U.S.C. § 5845\(a\)](#)" includes a shotgun, or a weapon made from a shotgun, with a barrel or barrels of less than 18 inches in length; a weapon made from a shotgun or rifle with an overall length of less than 26 inches; a rifle, or a weapon made from a rifle, with a barrel or barrels of less than 16 inches in length; a machine gun; a muffler or silencer for a firearm; a destructive device; and certain large bore weapons.>

<**5.** Where the defendant is under supervision in connection with a felony conviction, or has a prior felony conviction, possession of a firearm (other than a firearm

of a type described in [26 U.S.C. § 5845\(a\)](#)) will generally constitute a Grade B violation, because [18 U.S.C. § 922\(g\)](#) prohibits a convicted felon from possessing a firearm. The term “generally” is used in the preceding sentence, however, because there are certain limited exceptions to the applicability of [18 U.S.C. § 922\(g\)](#). See, e.g., [18 U.S.C. § 925\(c\)](#).>

## **United States Sentencing Guideline § 7B1.3. Revocation of Probation or Supervised Release (Policy Statement)**

**(a)(1)** Upon a finding of a Grade A or B violation, the court shall revoke probation or supervised release.

**(2)** Upon a finding of a Grade C violation, the court may (A) revoke probation or supervised release; or (B) extend the term of probation or supervised release and/or modify the conditions of supervision.

**(b)** In the case of a revocation of probation or supervised release, the applicable range of imprisonment is that set forth in [§ 7B1.4](#) (Term of Imprisonment).

**(c)** In the case of a Grade B or C violation--

**(1)** Where the minimum term of imprisonment determined under [§ 7B1.4](#) (Term of Imprisonment) is at least one month but not more than six months, the minimum term may be satisfied by (A) a sentence of imprisonment; or (B) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in [§ 5C1.1\(e\)](#) for any portion of the minimum term; and

**(2)** Where the minimum term of imprisonment determined under [§ 7B1.4](#) (Term of Imprisonment) is more than six months but not more than ten months, the minimum term may be satisfied by (A) a sentence of imprisonment; or (B) a sentence of imprisonment that includes a term of supervised release with a condition

that substitutes community confinement or home detention according to the schedule in [§ 5C1.1\(e\)](#), provided that at least one-half of the minimum term is satisfied by imprisonment.

**(3)** In the case of a revocation based, at least in part, on a violation of a condition specifically pertaining to community confinement, intermittent confinement, or home detention, use of the same or a less restrictive sanction is not recommended.

**(d)** Any restitution, fine, community confinement, home detention, or intermittent confinement previously imposed in connection with the sentence for which revocation is ordered that remains unpaid or unserved at the time of revocation shall be ordered to be paid or served in addition to the sanction determined under [§ 7B1.4](#) (Term of Imprisonment), and any such unserved period of community confinement, home detention, or intermittent confinement may be converted to an equivalent period of imprisonment.

**(e)** Where the court revokes probation or supervised release and imposes a term of imprisonment, it shall increase the term of imprisonment determined under subsections (b), (c), and (d) above by the amount of time in official detention that will be credited toward service of the term of imprisonment under [18 U.S.C. § 3585\(b\)](#), other than time in official detention resulting from the federal probation or supervised release violation warrant or proceeding.

**(f)** Any term of imprisonment imposed upon the revocation of probation or supervised release shall be

ordered to be served consecutively to any sentence of imprisonment that the defendant is serving, whether or not the sentence of imprisonment being served resulted from the conduct that is the basis of the revocation of probation or supervised release.

**(g)(1)** If probation is revoked and a term of imprisonment is imposed, the provisions of [§§ 5D1.1-1.3](#) shall apply to the imposition of a term of supervised release.

**(2)** If supervised release is revoked, the court may include a requirement that the defendant be placed on a term of supervised release upon release from imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release. [18 U.S.C. 3583\(h\)](#).

## United States Sentencing Guideline § 7B1.4. Term of Imprisonment (Policy Statement)

(a) The range of imprisonment applicable upon revocation is set forth in the following table:

Revocation Table (in months of imprisonment)						
<u>Criminal History Category</u> <sup>[FN*]</sup>						
Grade of Violation	I	II	III	IV	V	VI
Grade C	3-9	4-10	5-11	6-12	7-13	8-14
Grade B	4-10	6-12	8-14	12-18	18-24	21-27
Grade A	- <sub>1</sub> Except as provided in subdivision (2) below:					
	12-18	15-21	18-24	24-30	30-37	33-41
	- <sub>2</sub> Where the defendant was on probation or supervised release as a result of a sentence for a Class A felony:					
	24-30	27-33	30-37	37-46	46-57	51-63.

<sup>[FN\*]</sup>The criminal history category is the category applicable at the time the defendant originally was sentenced to a term of supervision.

**(b)** *Provided, that--*

**(1)** Where the statutorily authorized maximum term of imprisonment that is imposable upon revocation is less than the minimum of the applicable range, the statutorily authorized maximum term shall be substituted for the applicable range; and

**(2)** Where the minimum term of imprisonment required by statute, if any, is greater than the maximum of the applicable range, the minimum term of imprisonment required by statute shall be substituted for the applicable range.

**(3)** In any other case, the sentence upon revocation may be imposed at any point within the applicable range, provided that the sentence--

**(A)** is not greater than the maximum term of imprisonment authorized by statute; and

**(B)** is not less than any minimum term of imprisonment required by statute.