

SENTENCE ENHANCERS

| | Doubling Mandatory Minimums | Career Offender | Armed Career Criminal | Three Strikes | | | | | | | | | | | | | | | | | | | | | |
|--------------------------------------|--|---|---|--|--------|--------|--------|---------|---------|--------|-------|--------|-------|-----------|---------------|--------------|------|------------|-----------|--|-------------|------------|---|--|--|
| Sources of Law | 21 U.S.C. §841(b)(1)(A) & B | USSG 4B1.1 28 U.S.C. §944(h) | USSG §4B1.4 18 U.S.C. §924(e) | 18 U.S.C. §3559(c) | | | | | | | | | | | | | | | | | | | | | |
| Requirements | <p>1. Defendant manufacture, distribute or possess with intent:</p> <table border="0"> <tr> <td>Drug</td> <td>10 yr</td> <td>5 yr</td> </tr> <tr> <td>Heroin</td> <td>1 kilo</td> <td>100 gr</td> </tr> <tr> <td>Cocaine</td> <td>5 kilos</td> <td>500 gr</td> </tr> <tr> <td>Crack</td> <td>280 gr</td> <td>28 gr</td> </tr> <tr> <td>Marijuana</td> <td>1000 k/plants</td> <td>100 k/plants</td> </tr> <tr> <td>Meth</td> <td>50 gr pure</td> <td>5 gr pure</td> </tr> <tr> <td></td> <td>500 gr mix.</td> <td>50 gr mix.</td> </tr> </table> <p>2. Have one or more prior convictions for "felony drug offense."</p> | Drug | 10 yr | 5 yr | Heroin | 1 kilo | 100 gr | Cocaine | 5 kilos | 500 gr | Crack | 280 gr | 28 gr | Marijuana | 1000 k/plants | 100 k/plants | Meth | 50 gr pure | 5 gr pure | | 500 gr mix. | 50 gr mix. | <p>1. Defendant is at least 18.</p> <p>2. Instant offense is felony conviction for "crime of violence" or "controlled substance offense."</p> <p>3. Two prior convictions for "crime of violence" or "controlled substance offenses."</p> | <p>1. Violation of §922(g) (felon in possession of a firearm).</p> <p>2. Three prior convictions for "violent felonies" or serious drug offenses committed on different occasions.</p> | <p>1. Instant offense must be "serious violent felony."</p> <p>2. Two prior convictions for "serious violent felonies" or one prior "serious violent felony" + one prior "serious drug offense."</p> |
| Drug | 10 yr | 5 yr | | | | | | | | | | | | | | | | | | | | | | | |
| Heroin | 1 kilo | 100 gr | | | | | | | | | | | | | | | | | | | | | | | |
| Cocaine | 5 kilos | 500 gr | | | | | | | | | | | | | | | | | | | | | | | |
| Crack | 280 gr | 28 gr | | | | | | | | | | | | | | | | | | | | | | | |
| Marijuana | 1000 k/plants | 100 k/plants | | | | | | | | | | | | | | | | | | | | | | | |
| Meth | 50 gr pure | 5 gr pure | | | | | | | | | | | | | | | | | | | | | | | |
| | 500 gr mix. | 50 gr mix. | | | | | | | | | | | | | | | | | | | | | | | |
| Predicate Offense Definitions | Prior "felony drug offense" any state or federal offense classified as a felony involving manufacture, distribution, simple possession, or possession with intent. | "Crime of violence" = any felony for burglary of a dwelling, arson, extortion, other conduct involving serious risk of physical injury or with an element of the use or threatened use of force. 924(c) counts as crime of violence. "Controlled substance offense" = any state or federal offense involving manufacture, distribution, or intent to distribute. (Not simple possession.) NOTE: 18 USC 924(c) convictions count as predicate and instant offenses with base offense level 37 and Cr. Hist. Cat. VI. | "Violent felony" = any felony that i. has an element the use, threat of use, or attempted use of physical force against another person or ii. is burglary, arson, extortion, explosives use, or otherwise involves conduct that presents a serious potential for risk of physical injury to another. "Serious drug offense" = fed drug offenses with 10 year + max, or state drug offenses involving manufacture/ distribution and at least 10 year max. | "Serious violent felony" = murder, sex crimes, kidnaping, extortion, arson, firearms use, attempts/conspiracies thereof, or any other offense punishable over 10 years with a force element or which by its nature involves substantial risk of physical force being used. "Serious drug offense" = anything punishable under 21 USC §841 (b) (1) (A); 1K heroin, 5K cocaine, 280gr crack, etc. | | | | | | | | | | | | | | | | | | | | | |
| Results | Mand. min. trumps guideline sentencing range. Doubles mand. min. from 5 to 10 years or 10 to 20 years if def. has 1 prior drug felony. If has 2 or more, mand. life if drugs amounts 1 kilo heroin, etc. If no mand. min. but def. has prior and government file 851 notice, raises stat. max from 20 to 30 yrs | Criminal history category becomes VI. Offense level determined by statutory max, which is determined depending on whether government files 21 U.S.C. 851 enhancement, except for 924(c) convictions. | Criminal history becomes at least IV. Offense level is at least raised to 33 or 34. Under §924(e), 15 year mandatory minimum. | Mandatory life imprisonment. Note that 18 USC §3582 may provide relief to defendants over 70 who have done at least 30 years. | | | | | | | | | | | | | | | | | | | | | |
| Notes | No time limit on priors. Notice before trial/plea under 21 USC §851 (a) must be given by the government. If 851 notice filed, doubles supervised release term. Motions for downward departure will not take sentence below mandatory minimum, only 5K1.1 or Rule 35 motions, with 18 USC 3553(e) motions. | Sentenced or served time on prior within 15 years of commission of instant offense. No notice need be filed before trial/plea, enhancement automatic. Prior convictions "sustained" before commission of instant offense. Both priors had to be counted separately, cannot be "related cases." | No time limit on priors No notice need be filed before trial/plea, enhancement automatic. Motions for downward departures cannot reduce sentence to less than 15 years, only 5K1.1 or Rule 35 motion, with 18 USC 3553(e). Priors can be charged at the same time but have to be discreet criminal episodes to count. | No time limit on priors. Priors must occur after previous prior conviction (conduct-conv.-conduct.) Gov. must give written notice before trial/plea under 21 USC §851 (a). Robberies do not count as S.V.F.'s if def. proves that no dangerous weapon was used/threatened. A similar exception for arson exists. | | | | | | | | | | | | | | | | | | | | | |