

FIREARMS OFFENSES — SENTENCE ENHANCEMENTS BASED ON PRIOR CONVICTIONS

	<u>Basic Guideline Sentence</u> U.S.S.G. § 2K2.1	<u>Career Offender</u> 18 U.S.C. § 994(h) U.S.S.G. § 4B1.1	<u>Armed Career Criminal Act</u> 18 U.S.C. §§ 922(g)(1), 924(e), U.S.S.G. § 4B1.4	<u>Three Strikes</u> 18 U.S.C. § 3559(c)
Requirements	Defendant must be convicted of a firearms offense for which § 2K2.1 determines the sentence.	(a) Defendant is at least 18; (b) instant offense is “crime of violence” or “controlled substance offense”; and (c) two prior convictions for “crime of violence” or “controlled substance offense.”	(a) Conviction under § 922(g); and (b) three prior convictions for “violent felonies” or “serious drug offenses” committed on different occasions.	(a) Instant offense is “serious violent felony;” and (b) two prior convictions for “serious violent felonies;” or one prior “serious violent felony” and one prior “serious drug offense.”
Predicate Offense Definitions	As defined in the career offender guideline, § 4B1.2(a)(1) and (a)(2) and application note 1. →	“ <i>Crime of violence</i> ” means any felony that (a) has an element of use or threatened use of force; or (b) is burglary of a dwelling, arson, extortion, explosives use, or otherwise involves conduct presenting serious potential risk of physical injury to another. “ <i>Controlled substance offense</i> ” means any state or federal felony for drug distribution or manufacturing offense (excludes simple possession).	“ <i>Violent felony</i> ” means any felony that (a) has as an element the use, threat of use, or attempted use of physical force against a person; or (b) is burglary, arson, extortion, explosives use, or otherwise involves conduct that presents a serious potential risk of physical injury to another. “ <i>Serious drug offense</i> ” means a federal drug offense with a maximum sentence of at least 10 years; or a state drug distribution or manufacturing offense with a maximum of at least 10 years.	“ <i>Serious violent felony</i> ” includes murder, sex crimes, extortion, arson, firearms use or possession (see § 924(c)) and attempts and conspiracies thereof; or any other offense punishable by at least 10 years containing an element of force or that by its nature involves substantial risk of use of physical force. Robbery does not count if defendant can show that no dangerous weapon was used or threatened. “ <i>Serious drug offense</i> ” means offenses punishable under 21 U.S.C. § 841(b)(1)(A) (10-year minimum).
Results	Base offense level determined based in part on number of qualifying convictions and type of firearm involved.	Criminal history category becomes VI. Offense level is determined by statutory maximum of offense of conviction (if § 851 motion filed in drug case, base upon enhanced maximum).	18 U.S.C. § 924(c) requires minimum of 15 years, maximum of life. Under guideline, offense level goes to at least 33 and criminal history becomes at least IV.	Mandatory life imprisonment. Relief may be available under 18 U.S.C. § 3582 for defendants over age 70 who have completed at least 30 years of sentence.
Timing of prior convictions	Qualifying priors can be sustained <i>after</i> commission of instant offense (circuit split). Must have been sustained within 15 years of instant offense.	Qualifying priors must be sustained before commission of instant offense. Must be counted as separate convictions. Must have been sustained within 15 years of instant offense.	Priors can be charged at same time but must represent discreet criminal episodes. No limit on age of prior.	Prior must occur after previous prior conviction (conduct - conviction - conduct - conviction - instant offense). Priors must have become final. No limit on age of prior.
Notice of use of priors	Enhancement automatic; no notice required beyond PSR calculations.	Enhancement automatic; no notice required beyond PSR calculations.	Enhancement automatic; no notice required beyond PSR calculations.	Government must file information before trial or plea, pursuant to 21 U.S.C. § 851.

This chart is based in large part upon a chart of “Sentence Enhancement Provisions” prepared by Andrea Smith, of the East St. Louis, IL Federal Public Defender Office.