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Cross-Designation & Federal Firearms Laws:

What Local
Prosecutors
Need to Know

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TABLE OF CONTENTS

3 Introduction

5 Cross-Designation

What are cross designated Special Assistant United States Attorneys?

What is the process for becoming a cross-designated SAUSA?

What are the powers of the SAUSA? How long does the appointment last? Who does the cross-designated assistant report to?

What are the advantages of cross-designation to the individual, the elected/appointed chief prosecutor and the United States Attorney?

What challenges are posed by cross-designation?

7 Frequently Encountered Federal Firearms Laws

What federal firearms laws are most frequently encountered by those involved in gun violence reduction initiatives?

What is the definition of a firearm under these federal statutes?

What firearms are prohibited under federal law?

What are the penalties for possessing a prohibited firearm?

When is possession of a firearm or ammunition illegal under federal law?

Who is a prohibited person?

What are the penalties for possession by a prohibited person?

What does the commerce clause have to do with a prohibited person in possession case?

What if a firearm is used in drug trafficking or to commit a crime of violence?

What does “use” mean under § 924(c)?



What does “carry” mean under § 924(c)?

What does “in furtherance of” mean under this section?

Does § 924(c) require the gun to have traveled in interstate commerce?

What are the penalties for a violation of § 924(c)?

16 Acknowledgements

17 Appendix

18 U.S.C. § 921 Definitions

18 U.S.C. § 922 Unlawful Acts

18 U.S.C. § 924 Penalties

26 U.S.C. § 5845 Definitions

26 U.S.C. § 5861 Prohibited Acts

26 U.S.C. § 5871 Penalties

CROSS-DESIGNATION AND FEDERAL FIREARMS LAWS: WHAT LOCAL PROSECUTORS NEED TO KNOW

Introduction

Under the Project Safe Neighborhoods initiative (PSN), gun violence reduction programs are forming all over the country. These programs typically include a broad range of initiatives and interventions to prevent and combat violent crime. Many of these programs share the common perspective that heightened attention must be paid to the forum selected for prosecuting individuals who are involved in crimes involving the illegal possession and use of firearms.¹ Determination of the most appropriate forum is best accomplished through the systematic and purposeful coordination of members of the law enforcement community, especially the state, local and federal prosecutors. One of the tools being employed in this effort (and other initiatives dealing with such problems as drug use and distribution) is the use of cross-designated prosecutors and the application of federal firearms laws to cases traditionally only prosecuted at the state or local level.

This brief publication seeks to provide some answers to the most frequently asked questions regarding cross-designation and the federal firearms laws.

¹ For more information on these programs, see APRI's publications: *Combating Gun Violence: An In-Depth Look at Richmond Exile* (2001) and *Combating Gun Violence: Promising Practices for America's Prosecutors* (2002). For more information on PSN, please visit its website at www.psn.gov.

CROSS-DESIGNATION

What are cross-designated Special Assistant United States Attorneys?

Occasionally, state and local prosecutors are chosen to prosecute crimes not only in state or local courts, but in federal court as well. “Cross-designation” permits a local prosecutor to act for a time as an uncompensated Special Assistant United States Attorney (SAUSA). The power to appoint a SAUSA rests with the Attorney General and is derived from Title 28 U.S.C. § 543.

What is the process for becoming a cross-designated SAUSA?

First, the local chief prosecutor must agree to the cross-designation. This is true because cross-designated prosecutors typically are drawn from the local prosecutor’s office, and that office will continue to pay the salary of the SAUSA. Second, the United States Attorney must approve the appointment. Next, a security background check is performed. (This can take several months.) Finally, the SAUSA is sworn in before the United States Attorney or the Administrative Officer of the United States Attorney’s Office. The SAUSA must be admitted to the appropriate federal district court.

What are the powers of the SAUSA? How long does the appointment last? Who does the cross-designated assistant report to?

A Special Assistant United States Attorney is vested with the powers of an Assistant United States Attorney and acts as an agent of the United States. Although his or her salary is paid by the local prosecutor’s office, the SAUSA reports to and is accountable to the United States Attorney. The length of the appointment is typically two years but can be extended.

What are the advantages of cross-designation to the individual, the elected/appointed chief prosecutor and the United States Attorney?

A cross-designated prosecutor benefits from appointment as a SAUSA by being able to appear in federal court and gain contacts and exposure within the federal law enforcement community. The designee also develops expertise with federal laws governing the illegal use and possession of firearms.

Cross-designation helps the local chief prosecutor demonstrate a commitment to the federal/state partnership that is essential to the success of any gun violence reduction program under PSN. The chief prosecutor gets the added benefit of having a federal prosecutor who is accountable to the chief prosecutor and familiar with the local office. This cross-designated prosecutor can use his or her knowledge of the local and federal prosecutor's offices to make charging decisions that will further the interests of both offices.

The United States Attorney benefits from the cross-designation by demonstrating a commitment to partnership with local prosecutors. The cross-designation helps to demystify the federal system for local prosecutors who otherwise may encounter it rarely.

In general, cross-designated prosecutors ensure that the lines of communication between the state and federal prosecutors remain "hard-wired." Cases can be expedited and prosecutorial decisions are mutual, not unilateral.

What challenges are posed by cross-designation?

Cross-designated assistants who are physically housed in the United States Attorney's office may experience uncertainty or feelings of isolation from their colleagues in the local prosecutor's office and the world they know best. There will be a distinct learning curve and a different way of doing business in this new environment that takes time to master.

FREQUENTLY ENCOUNTERED FEDERAL FIREARMS LAWS

What federal firearms laws are most frequently encountered by those involved in gun violence reduction initiatives?

The most frequently encountered federal firearms laws are found at 18 U.S.C. §§ 922 and 924, but prosecutions occur under a myriad of other statutes, including 18 U.S.C. § 842 and 26 U.S.C § 5861.

What is the definition of a firearm under these federal statutes?

For purposes of § 922 and § 924 violations 18 U.S.C. § 921(a)(3) defines a “firearm” as:

(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.

This broad definition encompasses not only operable firearms but those that have been disassembled or dismantled or altered in such a way that they are inoperable at the time of the offense. For example, this definition has been found to include a firearm with the hammer filed down because it could be “readily converted” to expel a projectile. *United States v. Ruiz*, 986 F.2d 905 (5th Cir. 1993). This same justification applies for including starter guns within the definition of a firearm.

“Firearm” is defined differently for violations of 26 U.S.C. § 5861. *See* 26 U.S.C. § 5845(a).

What firearms are prohibited under federal law?

While there are a number of exceptions, federal law prohibits firearms with obliterated serial numbers, machine guns manufactured after May

19, 1986, semi-automatic assault weapons manufactured after September 13, 1994, and large capacity ammunition feeding devices (which include magazines that can accept more than 10 rounds of ammunition) manufactured after September 13, 1994. See 18 U.S.C. § 922 (k), (o), (v), and (w). In addition, unless registered to the possessor in the National Firearms Registration and Transfer Record, it is generally unlawful to possess short-barreled shotguns (defined as one with a barrel length of less than 18” or overall length less than 26”), short-barreled rifles (defined as one with a barrel length of less than 16” or overall length less than 26”), machine guns, silencers, and destructive devices. See 26 U.S.C. §§ 5845, 5861.

What are the penalties for possessing a prohibited firearm?

The statutory maximum for knowingly possessing a semi-automatic assault weapon, large capacity ammunition feeding device, or a firearm with an altered serial number is five years and/or \$250,000. 18 U.S.C. § 924 (a)(1)(B). Under the sentencing guidelines, a defendant with no prior record and one gun would receive 15-21 months for possessing a sawed-off shotgun, semi-automatic assault weapon or a firearm with an altered serial number. A defendant with a substantial record including at least one conviction for drug trafficking or a crime of violence is eligible for a sentence of 70-87 months for the same offense. Possessing an unregistered silencer, short barreled rifle, short barreled shotgun, destructive device or a sawed-off shotgun is punishable by a fine of up to \$10,000 and/or 10 years in prison. 26 U.S.C. § 5871. For the possession of a machine gun manufactured after May 19, 1986, the statutory maximum is 10 years and/or \$250,000. 18 U.S.C. § 924(a)(2).

When is possession of a firearm or ammunition illegal under federal law?

Possession of a firearm is illegal by a “prohibited” person when the firearm itself is illegal or when the firearm is used during or in relation to or in further drug trafficking crime or a violent crime.

Who is a prohibited person?

Under 18 U.S.C. § 922 (g) there are nine categories of prohibited persons. Generally, they include:

- felons;
- fugitives;
- unlawful users of or addicts to a controlled substance;
- persons who have been adjudicated as mentally “defective” or who have been involuntarily committed to a mental institution;
- illegal aliens and non-immigrant aliens;
- persons dishonorably discharged from the armed forces;
- persons who have renounced their U.S. citizenship;
- persons who are the subject of a qualifying domestic protective order; and
- persons convicted of a “misdemeanor crime of domestic violence”.

A prohibited person cannot possess, ship, transport or receive a firearm or ammunition that has traveled in interstate commerce. While this publication cannot cover every nuance of these categories, some clearly warrant further explanation.

Felons and those under indictment for felonies

Under this category, generally anyone who has been convicted of a crime punishable by more than one year in prison is a prohibited person. Similarly, a person under indictment for a crime punishable by more than a year is prohibited from receiving a firearm. 18 U.S.C. § 922 (n).

In federal court, it is not enough to merely introduce a prior conviction—you must show that the defendant is the individual convicted. This can be done through stipulation, fingerprint or signature cards, date of birth or social security number, and testimony of the arresting officer for the prior charge, or the testimony of the defendant’s parole or probation officer.

Unlawful user of or addict to a controlled substance

18 U.S.C. § 922 (g) (3) and case law do not provide clear guidance on who is considered to be an unlawful user of or addict to a controlled

substance. The Bureau of Alcohol, Tobacco, Firearms and Explosives regulations require that the use must have occurred “recently enough to indicate that the individual is actively engaged in such conduct.” 27 C.F.R. pt 178.11.

While case law is limited in this area, most cases have reached a similar conclusion. Several early cases claimed that the statute is unconstitutionally vague because it fails to define a period during which the drug use and the possession of the firearm must have occurred. *United States v. Reed*, 114 F.3d 1067, 1071 (10th Cir. 1997) held that the judicially created requirement of a temporal nexus is sufficient to overcome the vagueness of the statute. Courts now examine the “pattern and recency” of the defendant’s drug use in determining if there is a temporal nexus between the possession of the firearm and drug use.

Obviously, the easiest method of demonstrating drug use is to question the defendant regarding his or her drug use habits. “Use” also may be demonstrated through drug tests and arrest records. If a defendant is found with a small quantity of drugs and a gun, good police work is essential in determining the most appropriate charge. If the defendant says that drugs are only for personal use, he or she may be charged under § 922(g)(3). If the defendant is a distributor, then § 924 (c) may apply.

Subject of a qualifying protective order

In order to be a prohibited person under this section, the protective order must have been issued after a hearing of which the defendant received actual notice and an opportunity to participate. In order for this section to apply, the defendant must be restrained from harassing, threatening or stalking an intimate partner or the child of an intimate partner as defined under 18 U.S.C. § 921 (a)(32). The order must also contain finding or explicit prohibitions.

Misdemeanor crime of domestic violence

Under § 921 (a)(33), a crime of domestic violence includes an offense that:

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.

The underlying offense does not have to be classified as a “domestic violence” crime by state law. For example, it can be an assault or battery if it was committed against one of the intimate partners as set forth above. Notably, unlike the other prohibited person categories, this statute does not provide an exception for law enforcement officers or military personnel; therefore, they cannot possess a firearm or ammunition if they have a misdemeanor domestic violence conviction.

What are the penalties for possession by a prohibited person?

Absent sentencing enhancements for armed career criminals, 18 U.S.C. § 924(a)(2) provides that the maximum penalty for most prohibited persons in possession of a firearm is 10 years and \$250,000. The outcome in most cases will be determined by the sentencing guidelines. A prohibited person who is found in possession of one gun but who has no prior record will receive 15–21 months. A prohibited person with a substantial record that includes one conviction for a crime of violence or drug trafficking is eligible for a 70–87 month sentence.

Armed career criminals receive enhanced penalties in the federal system. An armed career criminal is a person who has three or more convictions for a serious drug offense or a felony crime of violence, which includes crimes that have, as an element, the use, attempted use or threatened use of physical force against the person of another. A defendant who falls into this category faces a mandatory minimum of 15 years imprisonment under 18 U.S.C. § 924(e).

What does the commerce clause have to do with a prohibited person in possession case?

In order to establish federal jurisdiction, the gun used must have traveled in interstate or foreign commerce. For firearms cases the prosecutor needs to show only that the firearm or ammunition crossed a state line at some point in its history.² For example, if the firearm was manufactured in Michigan and is recovered in Virginia, the interstate nexus requirement has been satisfied. If the firearm was made in Virginia and recovered in Virginia, but the prosecutor can demonstrate that it was used to commit a crime in Maryland 10 years ago, this too will suffice.

The best way to establish that the gun has traveled in interstate commerce is to contact the Bureau of Alcohol, Tobacco, Firearms and Explosives, which can trace crime guns to determine where they were manufactured and sold.

What if a firearm is used in drug trafficking or to commit a crime of violence?

A person who “uses or carries” a firearm during or in relation to, or possesses a firearm “in furtherance of,” drug trafficking or a crime of violence that can be prosecuted in federal court may receive enhanced penalties under 18 U.S.C. § 924 (c). Most of the cases arising out of this statute have centered on the definitions of “use,” “carry,” and “in furtherance of.”

What does “use” mean under § 924(c)?

Courts have determined that “use” of a firearm requires something more than mere possession; it requires active employment of the weapon. *Bailey v. United States*, 516 U.S. 137, 149 (1995) defines active employment to include: “brandishing, displaying, battering, striking with, and most obviously, firing or attempting to fire a firearm.” The *Bailey* court also notes that “use” can mean “to convert to one’s service,” “employ,”

²The controlling case in this area is *Scarborough v. United States*, 431 U.S. 563 (1977).

“avail oneself of,” and to make “reference to” if referring to the firearm is calculated to make the transaction easier.

For example, a drug dealer who keeps a firearm in the closet during a drug transaction cannot be said to have “used” the firearm unless he makes reference to the weapon during the transaction. However, this same section also prohibits possession of a firearm “in furtherance of” drug trafficking. Under the “fortress theory,” if the defendant uses a firearm to protect the house in which drugs or the proceeds of drugs are kept, he could be guilty of possession in furtherance of drug trafficking.³

What does “carry” mean under § 924(c)?

The federal circuits have varying definitions of “carry.” All circuits agree that carrying requires knowing possession and transportation of the firearm. *United States v. Mitchell*, 104 F.3d 494, 653 (4th Cir. 1997). However, the First, Second, Sixth and Ninth circuits also require that the firearm be readily accessible. *See United States v. Ramirez-Ferrer*, 82 F.3d 1149, 1153–4 (1st Cir. 1996); *United States v. Cruz-Rojas*, 101 F.3d 283 (2d Cir. 1996); *United States v. Riascos-Suarez*, 73 F.3d 616, 623 (6th Cir. 1996); *United States v. Hernandez*, 80 F.3d 1253, 1257–8 (9th Cir. 1996). In a jurisdiction that requires that the firearm be accessible, transporting a gun in the trunk of a car will not qualify as carrying because the defendant does not have easy access to the weapon.

What does “in furtherance of” mean under this section?

One of the principal cases in determining the definition and scope of “in furtherance of” is *United States v. Ceballos-Torres*, 218 F.3d 409 (5th Cir. 2002). Possession of a firearm is “in furtherance of” a drug trafficking crime “when it furthers, advances, or helps forward that offense.” *Id.* at 411.

First, an accessible gun provides defense against anyone who may attempt to rob the trafficker of his drugs or drug profits. Second,

³ In response to the decision in *Bailey v. United States*, in 1998 Congress amended §924(c) to make possession of a firearm in furtherance of drug trafficking or a crime of violence punishable by enhanced penalties.

possession of a gun, and letting everyone know that you are armed, lessens the chance that a robbery will even be attempted. Third, having a gun accessible during a transaction provides protection in case a drug deal in the apartment turns sour. Fourth, the visible presence of a gun during the transaction may prevent the deal from turning sour in the first place. Fifth, having a gun may allow the drug trafficker to defend ‘turf,’ areas of the street from which lower level dealers operate for the trafficker. There may be other ways.

Id. at 412.

Does § 924 (c) require the gun to have traveled in interstate commerce?

No. Because the underlying offense (drug trafficking or a crime of violence over which there is federal jurisdiction) is prosecutable in federal court, there is no interstate nexus requirement for the gun itself.

What are the penalties for a violation of § 924(c)?

Penalties under this section vary depending on the type of firearm, how the firearm was used and whether the offense is the defendant’s first violation.

Offense	Penalty
Standard case	Not less than 5 yrs
Brandishing the firearm	Not less than 7 yrs
Discharging the firearm	Not less than 10 yrs
A short barreled rifle or shotgun or semi-automatic assault weapon	Not less than 10 yrs
A machine gun, destructive device or silencer	Not less than 30 yrs
Second or subsequent conviction	Not less than 25 yrs
Second or subsequent conviction and the gun is a machine gun, destructive device or silencer	LIFE

All sentences under this section must be served consecutively to any other sentence, and offenders are not eligible for probation. Under federal law, the second conviction does not have to be the result of a separate incident.

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APPENDIX

18 U.S.C. § 921. Definitions

- (a) As used in this chapter -
- ...
- (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.
- (4) The term “destructive device” means -
- (A) any explosive, incendiary, or poison gas -
 - (i) bomb,
 - (ii) grenade,
 - (iii) rocket having a propellant charge of more than four ounces,
 - (iv) missile having an explosive or incendiary charge of more than one-quarter ounce,
 - (v) mine, or
 - (vi) device similar to any of the devices described in the preceding clauses;
 - (B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and
 - (C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled. The term “destructive device” shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line

- throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.
- (5) The term “shotgun” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.
- (6) The term “short-barreled shotgun” means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification or otherwise) if such a weapon as modified has an overall length of less than twenty-six inches.
- (7) The term “rifle” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.
- (8) The term “short-barreled rifle” means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.
- ...
- (14) The term “indictment” includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.
- (15) The term “fugitive from justice” means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.
- ...
- (17)(A) The term “ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

- (B) The term “armor piercing ammunition” means -
- (i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or
 - (ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.
- (C) The term “armor piercing ammunition” does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Secretary finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Secretary finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

....

- (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.

...

- (23) The term “machine gun” has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).
- (24) The terms “firearm silencer” and “firearm muffler” mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.
- ...
- (28) The term “semi-automatic rifle” means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.
- (29) The term “handgun” means -
- (A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and
 - (B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.
- ...
- 31) The term “large capacity ammunition feeding device” -
- (A) means a magazine, belt, drum, feed strip, or similar device manufactured after the date of enactment of the Violent Crime Control and Law Enforcement Act of 1994 that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition; but
 - (B) does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rim-fire ammunition.
- (32) The term “intimate partner” means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.
- (33)(A) Except as provided in subparagraph (C), the term “misdemeanor crime of domestic violence” means an offense that -
- (i) is a misdemeanor under Federal or State 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.

....

18 U.S.C. § 922. Unlawful acts

- (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 non-immigrant 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.

...

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

...

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machine gun.

...

(v)(1) It shall be unlawful for a person to manufacture, transfer, or possess a semi-automatic assault weapon.

(2) Paragraph (1) shall not apply to the possession or transfer of any semi-automatic assault weapon otherwise lawfully possessed

under Federal law on the date of the enactment of this subsection.

- (3) Paragraph (1) shall not apply to -
 - (A) any of the firearms, or replicas or duplicates of the firearms, specified in Appendix A to this section, as such firearms were manufactured on October 1, 1993;
 - (B) any firearm that -
 - (i) is manually operated by bolt, pump, lever, or slide action;
 - (ii) has been rendered permanently inoperable; or
 - (iii) is an antique firearm;

...

- (x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile -
 - (A) a handgun; or
 - (B) ammunition that is suitable for use only in a handgun.
- (2) It shall be unlawful for any person who is a juvenile to knowingly possess -
 - (A) a handgun; or
 - (B) ammunition that is suitable for use only in a handgun.

18 U.S.C. § 924. Penalties

- (a)(1) Except as otherwise provided in this subsection, subsection (b), (c), or (f) of this section, or in section 929, whoever -
 - (A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;
 - (B) knowingly violates subsection (a)(4), (f), (k), (r), (v), or (w) of section 922;
 - (C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l); or
 - (D) willfully violates any other provision of this chapter, shall be

fined under this title, imprisoned not more than five years, or both.

- (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.

...

(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 semi-automatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or
 - (ii) is a machine gun 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 machine gun 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 the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).
- (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.
- (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 not more than \$25,000 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 the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.) 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.
- (f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.
- (g) Whoever, with the intent to engage in conduct which –
- (1) constitutes an offense listed in section 1961(1),
 - (2) is punishable under the Controlled Substances Act (21 U.S.C. 802 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.),

- (3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or
- (4) constitutes a crime of violence (as defined in subsection (c)(3)), travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

...

- (o) A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both; and if the firearm is a machine gun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

26 U.S.C. § 5845. Definitions

For the purpose of this chapter -

(a) Firearm

The term "firearm" means (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machine gun; (7) any silencer (as defined in section 921 of title 18, United States Code); and (8) a destructive device. The term "firearm" shall not include an antique firearm or any device (other than a machine gun or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteris-

tics is primarily a collector's item and is not likely to be used as a weapon.

(b) Machine gun

The term "machine gun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

(c) Rifle

The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

(d) Shotgun

The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

(e) Any other weapon

The term "any other weapon" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12

inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

(f) Destructive device

The term “destructive device” means (1) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes; and (3) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled. The term “destructive device” shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10 of the United States Code; or any other device which the Secretary finds is not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes.

...

26 U.S. C § 5861. Prohibited acts

It shall be unlawful for any person –

- (a) to engage in business as a manufacturer or importer of, or dealer in, firearms without having paid the special (occupational) tax required by section 5801 for his business or having registered as required by section 5802; or
- (b) to receive or possess a firearm transferred to him in violation of the provisions of this chapter; or
- (c) to receive or possess a firearm made in violation of the provisions of this chapter; or
- (d) to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record; or
- (e) to transfer a firearm in violation of the provisions of this chapter; or
- (f) to make a firearm in violation of the provisions of this chapter; or
- (g) to obliterate, remove, change, or alter the serial number or other identification of a firearm required by this chapter; or
- (h) to receive or possess a firearm having the serial number or other identification required by this chapter obliterated, removed, changed, or altered; or
- (i) to receive or possess a firearm which is not identified by a serial number as required by this chapter; or
- (j) to transport, deliver, or receive any firearm in interstate commerce which has not been registered as required by this chapter; or
- (k) to receive or possess a firearm which has been imported or brought into the United States in violation of section 5844; or
- (l) to make, or cause the making of, a false entry on any application, return, or record required by this chapter, knowing such entry to be false.

26 U.S.C. § 5871. Penalties

Any person who violates or fails to comply with any provisions of this chapter shall, upon conviction, be fined not more than \$10,000, or be imprisoned not more than ten years, or both.



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