

# ***UNITED STATES SENTENCING COMMISSION***

## **VARIABLE CODEBOOK FOR 21 U.S.C. § 851 / ENHANCED DRUG PENALTY DATAFILE**



**DOCUMENTATION FOR  
FISCAL YEARS 2016 - 2020**

## INTRODUCTION

In FY 2016, the Commission began collecting data on enhanced drug penalties in federal drug trafficking cases. Offenders in these cases are primarily convicted of offenses under title 21 of the United States Code. These statutes prohibit the distribution, manufacture, or importation of controlled substances, and possession with intent to distribute controlled substances. They also prohibit certain specific acts like distributing drugs to persons who are under the age of 21 or who are pregnant, using persons under the age of 18 in drug operations, and distributing drugs in or near schools and colleges. The most commonly prosecuted drug offenses often carry mandatory minimum penalties under 21 U.S.C. §§ 841 and 960. Under both provisions, mandatory minimum penalties are tied to the quantity and type of controlled substance involved in the offense. When the statutory quantity thresholds are met, a five-year mandatory minimum penalty and a maximum term of 40 years apply. Larger amounts increase the mandatory minimum penalty to ten years and the maximum penalty to of life imprisonment. Higher penalty ranges may also apply if death or serious bodily injury resulted from use of the controlled substance.

The statutory minimum penalties may be enhanced if a drug offender has one or more prior convictions for specific offenses. Offenders sentenced before December 21, 2018, and who otherwise qualified for the five-year mandatory minimum penalty were subject to an increased statutory range of ten years to life if they had a prior conviction for a “felony drug offense.”<sup>1</sup> Similarly, a ten-year mandatory minimum penalty could be enhanced to 20 years for one prior felony drug offense, while offenders previously convicted of two or more drug felonies were subject to a mandatory term of life imprisonment. For sentences otherwise increased due to a death or serious bodily injury, a prior felony drug offense further increased the mandatory minimum sentence. Finally, even for offenders who were convicted under a provision that did not carry a mandatory minimum penalty, such as 21 U.S.C. § 841(b)(1)(C), a prior conviction for a felony drug offense could increase statutory maximum penalty from 20 years to 30 years.

On December 21, 2018, the First Step Act of 2018<sup>2</sup> went into effect. Section 401 of that Act modified the type of prior convictions that trigger these enhanced sentences and also lowered some of the enhanced minimum penalties that apply. For offenders sentenced after December 21, 2018, who were convicted of an offense carrying a five-year or ten-year mandatory minimum penalty, these penalties can now be enhanced only for a prior “serious drug felony;”<sup>3</sup> but they also may now be enhanced for a prior “serious violent felony.”<sup>4</sup> However, offenders convicted under a provision that does not carry a mandatory minimum penalty, such as 21 U.S.C. § 841(b)(1)(C), remain subject to an enhanced statutory maximum penalty for any felony drug offense (but not for any prior violent offense). Also, for offenders sentenced after December 21, 2018, a qualifying prior conviction can increase a ten-year mandatory minimum only to 15 years, while two prior qualifying convictions can increase the ten-year penalty only to 25 years.

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<sup>1</sup> This term is defined at 21 USC § 802(44).

<sup>2</sup> Pub. L. No. 115-391 (2018).

<sup>3</sup> This term is defined at 21 USC § 802(57).

<sup>4</sup> This term is defined at 21 USC § 802(58).

Offenders who are subject to enhanced penalties also are subject to enhanced terms of supervised release. For example, courts must impose a term of supervised release of at least five years for any offender convicted pursuant to 21 U.S.C. § 841(b)(1)(A) or § 960(b)(1). Similarly, offenders convicted under 21 U.S.C. §§ 841(b)(1)(B) and 960(b)(2) must receive a term of supervised release of at least four years. However, when the offender has a prior conviction that enhances a mandatory minimum penalty, the mandatory term of supervised released is doubled.

These enhanced penalties are not automatically triggered upon conviction. Prosecutors must take affirmative steps prior to trial or the entry of a guilty plea for the increased penalties to apply. The additional procedural requirements are listed in 21 U.S.C. § 851. This procedural provision is usually not listed on the Judgment & Commitment order (J&C) as a count of conviction, therefore, information about which offenders received these penalties was not captured in the Commission's individual offender datafiles before fiscal year 2016. Using optical character recognition (OCR) technology, the Commission now reviews all court documents submitted to the Commission to identify cases that may involve an enhanced drug penalty. The identified cases are then reviewed by Commission staff and information related to the application of the enhanced drug penalties is entered into the 21 U.S.C. § 851/enhanced drug penalty datafile.

This codebook documents the various data fields that are recorded and the changes that have occurred to the datafile (addition/removal of fields as well as changes to values) over time. Researchers are cautioned to be mindful of the period being studied and whether it was before or after the effective date of the First Step Act, as the Commission's data collection process for these cases changed due to the statutory amendments made by that Act.

### How to Use the USSC Criminal History Codebook

The first column in the codebook, NAME, lists the name of each variable in alphabetical order. The second column, FORM, describes whether the variable is coded as numeric (NUM), character (CHAR), or date (DATE). This column also lists the length of each variable. The third column, CODES, lists all the values for each variable and describes what those values mean. The final column, DESCRIPTION, describes the uses and creation of each variable.

Some of the variables in this datafile describes elements of convictions in an offender's criminal history. Each variable is numbered, which corresponds to a conviction. For example, PRSNDT1, PROFFN1, and PRSENT1 are variables for the first conviction on the datafile, PRSNDT2, PROFFN2, and PRSENT2 correspond to the second conviction on the data file, etc. Convictions are not always in order on the data file from earliest to latest conviction.

NAME	FORMAT	CODES	DESCRIPTION
<b>CRMHT851</b>	NUM 3	0 = No (PSR is present, no drug priors) 1 = Yes 2 = CH Unavailable · = Missing, Indeterminable, or Inapplicable	Indicates whether the offender has any (felony or misdemeanor) prior drug offenses documented in the PSR, regardless of whether they received criminal history points.
<b>CTRELIEF</b>	NUM 3	0 = No 1 = Yes · = Missing, Indeterminable, or Inapplicable	Indicates whether the court found the 21 U.S.C. § 851 enhancement did not apply, for a reason other than safety valve or USSG §5K1.1 (substantial assistance), for cases in which the section 851 enhancement was not withdrawn. For example, immediately after enactment of the First Step Act, courts often determined that an offender's prior convictions did not satisfy the new requirements for section 851 enhanced penalties and dismissed the enhancement. In those cases this variable is "Yes."
<b>DGMAX851</b>	NUM 4	Range: 1 thru 9997 9996 =Life 9997 =Death · = Missing, Indeterminable, or Inapplicable	Represents mandatory maximum sentence (in months) associated with any count of conviction that is a drug statute.
<b>DGMIN851</b>	NUM 4	Range: 0 thru 9997 9996 = Life 9997 = Death · = Missing, Indeterminable, or Inapplicable	Represents mandatory minimum sentence (in months) associated with any count of conviction that is drug statute.
<b>FILED</b>	NUM 3	0 = Not filed, no mention 1 = Filed 2 = Undetermined 3 = Not Filed, DOJ agreed not to file 4 = Not Filed, PO states could have filed · = Missing, Indeterminable, or Inapplicable	Indicates whether the government filed a 21 U.S.C. § 851 enhancement in the case, regardless of whether the enhancement applied at sentencing. "Not Filed" (0) and "Undetermined" (2) cases are not on the final datafile.

<b>FILEDATE</b>	DATE 4		The date when the government filed a 21 U.S.C. § 851 enhancement in the case.  <b>FORMAT: MMDDYY10.</b>
<b>INDTDATE</b>	DATE 4		The date of the original indictment or information.  <b>FORMAT: MMDDYY10.</b>
<b>OFFENNUM</b>	NUM 3	Range: 1 thru 90 0 = None · = Missing, Indeterminable, or Inapplicable	Number of prior criminal history events.
<b>PRCHPT1 thru PRCHPTX</b>	NUM 3	Range: 1 thru 3 0 = None · = Missing, Indeterminable, or Inapplicable	Indicates the number of criminal history points assigned to a prior conviction. The end points for this variable are denoted with X because the total number of criminal history events recorded varies from case to case and year to year.
<b>PRFELN1 thru PRFELNX</b>	NUM 3	0 = No 1 = Yes 2 = Undetermined · = Missing, Indeterminable, or Inapplicable	Indicates whether a prior conviction is a felony offense. The end points for this variable are denoted with X because the total number of criminal history events recorded varies from case to case and year to year. Note: this variable is relevant only to offenders sentenced prior to December 21, 2018. After that date the Commission collected information only on felony offenses.
<b>PROFFN1 thru PROFFNX</b>	NUM 4	1 = Murder/Attempted Murder 2 = Unspecified Manslaughter 3 = Non-Negligent Manslaughter 4 = Vehicular Manslaughter 6 = Kidnapping 8 = Forcible Sex Offense 9 = Robbery 10 = Aggravated Assault 11 = Simple Assault 12 = Intimidating A Witness 13 = Intimidation (Not Witness) 14 = Hit And Run With Bodily Injury 15 = Extortion 16 = Child Abuse 17 = Other Violent Offense 19 = Arson 27 = Weapons Offenses 29 = Rioting 340 = Trafficking Heroin 345 = Trafficking Cocaine Or Crack (Only Used Prior to FY18) 346 = Trafficking Cocaine 347 = Trafficking Crack 350 = Trafficking Other/Unspecified Controlled Substance 360 = Trafficking Marijuana	The criminal history offense code that identifies a prior offense that did or could have triggered a section 851 enhanced penalty.  For offenders sentenced before December 21, 2018, only offenses numbered 340 to 445 will have been coded (as prior to that date violent offenses could not serve as a predicate offense for section 851 enhanced penalties). Also, prior to December 21, 2018, all prior felony drug offenses were coded, regardless of whether there was an indication of which offense or offenses served as the basis for the section 851 enhanced penalties.  For offenders sentenced on and after December 21, 2018, only the serious drug felony or serious violent felony that served as the basis for the enhanced penalty was coded. If the specific prior offenses serving as that basis could not be determined from the court documents, all prior serious drug felony offenses and serious violent felony offenses were coded.  Note: for offenders sentenced on or after December 21, 2018, but who were not

		<p>375 = Trafficking Methamphetamine  380 = Possession Of Heroin  385 = Possession Of Cocaine Or Crack (Only Used Prior to FY18)  386 = Possession Of Cocaine  387 = Possession Of Crack  390 = Possession Of Other/Unspecified Controlled Substance  400 = Possession Of Marijuana  415 = Possession Of Methamphetamine  420 = Unspecified Heroin Offense  425 = Unspecified Cocaine Or Crack Offense ((Only Used Prior to FY18)  426 = Unspecified Cocaine Offense  427 = Unspecified Crack Offense  430 = Other/Unspecified Drug Offense  440 = Unspecified Marijuana Offense  445 = Unspecified Methamphetamine Offense</p>	<p>convicted of an offense carrying a mandatory minimum penalty, any felony drug offense (but not a violent offense) could trigger the enhanced statutory maximum penalty. If the court identified the specific offense, only that offense was coded. If not, all prior felony drug offenses were coded.</p> <p>This field may be missing if no prior offenses appeared to qualify as predicate offenses for the section 851 enhancement.</p> <p>For offenders sentenced before FY 2018, in criminal history events where multiple offenses were sentenced on the same day, this code captures only the single most serious drug offense sentenced on a particular day.</p> <p>The end points for this variable are denoted with X because the total number of criminal history events recorded varies from case to case and year to year.</p>
<b>PRESENT1 thru PRESENTX</b>	NUM 4	<p>Range: 1 thru 9997  9996 = Life  9997 = Death  · = Missing, Indeterminable, or Inapplicable</p>	<p>The length of the prison sentence imposed for prior offense (in months). The end points for this variable are denoted with X because the total number of criminal history events recorded varies from case to case and year to year.</p>
<b>PRSNDT1- PRSNDTX</b>	DATE 8		<p>The date the offender was sentenced for the prior offense. The end points for this variable are denoted with X because the total number of criminal history events recorded varies from case to case and year to year.</p> <p><b>FORMAT: MMDDYY10.</b></p>
<b>RELIEF</b>	NUM 3	<p>0 = No  1 = Safety Valve  2 = 5K  3 = Both  · = Missing, Indeterminable, or Inapplicable</p>	<p>Indicates whether the defendant received relief from the drug mandatory minimum penalty through application of the statutory Safety Valve (18 U.S.C. § 3553(f)) or by providing substantial assistance to the government (USSG §5K1.1).</p>
<b>STMAX851</b>	NUM 4	<p>Range: 1 thru 9997  9996 =Life  9997 =Death  · = Missing, Indeterminable, or Inapplicable</p>	<p>Total statutory maximum prison term for all counts (in months). Note: this value may be higher than the statutory maximum penalty for any drug conviction if the offender was also convicted of a non-drug offense.</p>

<b>STMIN851</b>	NUM 4	Range: 0 thru 9997 9996 = Life 9997 = Death · = Missing, Indeterminable, or Inapplicable	Total statutory minimum prison term for all counts of conviction (in months). Note: this value may be higher than the statutory minimum penalty for any drug conviction if the offender was also convicted of an offense requiring the imposition of a consecutive mandatory penalty (pursuant to 18 U.S.C. § 924(c) or 18 U.S.C. § 1028A).
<b>USSCIDN</b>	NUM 6	Range: 7 numbers	Unique sequential identification number given to cases upon receipt at the Commission.
<b>WITHDRWN</b>	NUM 3	0 = No 1 = Yes 2 = Undetermined 3 = At least 1 withdrawn/at least 1 remains · = Missing, Indeterminable, or Inapplicable	Indicates whether the section 851 enhancement was withdrawn on or before the date of sentencing. <b>Note: value “3” was added for cases in which the offender was sentenced in FY 2017 and later.</b>