

2018
National
Seminar

Drugs & Guns

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Defendants charged with drug trafficking offenses in federal court are often also charged with firearms offenses in connection with drug trafficking. This document highlights the interplay between the two.

§2D1.1(b)(1) Weapon Enhancement:

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- If a dangerous weapon (including a firearm) was possessed, add 2 levels.
- Include all firearms that are part of relevant conduct including:
 - All weapons the defendant possessed, including weapons outside the offense of conviction.
 - In some cases, weapons possessed by co-defendants.
- Enhancement applies if the weapon is present, unless it is clearly improbable that the weapon was connected with the offense. *See Application Note 11(A).*

§2K2.1(b)(6) Use of Firearm “In Connection With” Another Offense:

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- Add 4 levels if the weapon was used in connection with another felony offense.
 - Underlying offense can be any federal, state, or local offense punishable by more than one year, regardless of whether the defendant was charged or convicted of the underlying offense. *See Application Note 14(C).*
- Firearm must have facilitated another offense; however, the other offense cannot be another firearms offense.
- Special rules (Application Note 14(B)):
 - In a drug trafficking offense, the firearm must be in close proximity to the drugs.
 - In a burglary offense, the enhancement applies if the firearm stolen during the course of a burglary.
- Enhancement applies to firearms in the indictment as well as other firearms as part of relevant conduct.

§2K2.1(c)(1): Cross Reference

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- Cross reference only applies to firearms in the count of conviction.
- Cannot bring in relevant conduct.



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Tips for Guideline Application

- Both guidelines consider “expanded” relevant conduct, that is, similar conduct that is part of the same course of conduct, common scheme or plan as the offense of conviction.
- Base offense levels at §2K2.1 determined by factors such as:
 - Status (prohibited person)
 - Type of firearm (e.g. large-capacity)
 - Number and type of prior conviction (“crime of violence”/“controlled substance offense”).
- In a drug trafficking offense, the firearm must be in close proximity to the drugs.
- Firearm must be charged in the offense of conviction to apply the cross reference at §2K2.1.
- Weapon enhancement applies at §2D1.1 if firearm is present, unless clearly improbable it is connected with the offense.
- Do not apply weapon enhancements for underlying offense when defendant is also convicted of 18 U.S.C. § 924(c).

Common Statutes

- 21 U.S.C. § 841 (a)(1) (Distribution)
- 21 U.S.C. § 846 (Attempt and Conspiracy to Distribute)
- 18 U.S.C. § 922(g) (Possession of a Firearm by a Prohibited Person)
- 18 U.S.C. § 924(c) (Possessing a Firearm in Furtherance of a Drug Crime)

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The United States Sentencing Commission, an independent agency in the judicial branch of the federal government, was organized in 1985 to develop a national sentencing policy for the federal courts. The resulting sentencing guidelines provide structure for the courts' sentencing discretion to help ensure that similar offenders who commit similar offenses receive similar sentences.