

BROWNSTONE LAW

FEDERAL FIREARMS APPEALS LAWS

I. POSSESSION OF A FIREARM OR AMMUNITION BY A PROHIBITED PERSON:

18 USC § 922(g) & (n). Punishable by up to 10 years imprisonment. May receive minimum sentence of 15 years without parole if offender has three or more prior convictions for a felony crime of violence (e.g. burglary, robbery, assault, possession of offensive weapons) and/or drug trafficking felony.

Elements

A. **Possession or receipt** of a firearm or ammunition;

B. By a subject who falls within one of the following categories:

Felon - (Additionally, persons awaiting trial on felony charges are prohibited from **receiving** firearms.);

Drug user or addict - (Often shown where paraphernalia seized, subject tests positive for drugs and/or subject claims drugs were possessed for personal use.);

Alien - (Includes *illegal aliens* and *aliens lawfully admitted under non-immigrant visas*, i.e., those aliens *not* admitted for permanent residence. This provision does not prohibit aliens who lawfully possess a so-called “green card” from possessing guns or ammunition.);

Is subject to a domestic restraining order - (The order must prohibit contact with an intimate partner, or child of the subject, and must have been issued only after a hearing of which the subject was notified and at which the subject had an opportunity to participate. The order must also find the subject poses a threat to the physical safety of the intimate partner or child or must prohibit the use, threatened use or attempted use of physical force.);

Has a prior conviction for domestic assault - (Includes a prior conviction for any assault or threatened use of a deadly weapon against a present or former spouse or partner or child or guardian of any such person. The subject must have been entitled to a jury trial and been represented by counsel in the prior proceeding or be shown to have waived those rights.);

Fugitive from justice - (Fled any state to avoid being prosecuted or to avoid testifying in any criminal proceeding.); or

Dishonorably discharged from the military; *AND*

C. The firearm or ammunition was transported across a state line at any time.

II. KNOWINGLY SELL, GIVE OR OTHERWISE DISPOSE OF ANY FIREARM OR AMMUNITION TO ANY PERSON WHO FALLS WITHIN ONE OF THE ABOVE CATEGORIES:

18 USC § 922(d). Punishable by up to 10 years imprisonment.

III. USE, CARRY OR POSSESS A FIREARM IN RELATION TO OR IN FURTHERANCE OF A DRUG FELONY OR A FEDERAL CRIME OF VIOLENCE:

18 USC § 924(c). Punishment ranges from **at least 5 years** up to life imprisonment, without parole, or **death** if death results from use of firearm. Sentence must be served **consecutive** to any other sentence. Mandatory minimum sentence increases depending upon: **the type of firearm involved** (sawed-off gun, silencer, etc.); **whether more than one offense was committed**; and **whether gun** was simply possessed or **was brandished or discharged**.

IV. STOLEN FIREARM, AMMUNITION OR EXPLOSIVE:

18 USC §§842(h); 922(i), (j) & (u). Punishable by up to 10 years imprisonment.

- A. May not receive, possess, conceal, store, pledge or accept as security for a loan, barter, sell or ship or transport across a state line any **stolen firearm, ammunition or explosive**.
- B. May not steal or unlawfully take or carry away a firearm **from the person or premises of a firearms licensee**.

V. FIREARM IN A SCHOOL ZONE:

18 USC § 922(q)(2)(A). Punishable by up to 5 years imprisonment.

- A. Except as authorized, may not **possess or discharge** a firearm in a school zone.

VI. KNOWINGLY POSSESS OR MANUFACTURE:

18 USC § 922(k), (o) & (v); 26 USC § 5861. Punishable by up to 5 or 10 years imprisonment, depending upon specific violation.

- A. Any **machine gun, fully automatic firearm** or any part designed or intended exclusively for use in such weapon;
- B. Any **firearm silencer**, including any device, or part thereof, designed to silence, muffle or diminish the report of a firearm;
- C. **Sawed-off shotgun** with a barrel length of less than 18" or overall length less than 26";
- D. **Sawed-off rifle** with a barrel length of less than 16" or overall length less than 26";
- E. **Destructive device**;
- F. **Semi-automatic assault weapon** manufactured after October 1, 1993; *OR*
- G. Any firearm which **lacks a serial number** or contains an **altered or obliterated serial number**.

VII. SELL, DELIVER OR TRANSFER TO A JUVENILE:

18 USC § 922(x)(1). Punishable by up to 1 year imprisonment unless transferor had reason to believe juvenile would commit crime of violence with gun or ammunition, then up to 10 years imprisonment.

18 USC § 922(b). A **firearms licensee** faces up to 5 years imprisonment.

- A. May not sell, deliver or transfer a handgun or handgun-only ammunition to a **person who is under age 18**;
- B. A person under age 18 may not possess a handgun or handgun-only ammunition;
(Certain exceptions apply to A & B, such as where juvenile possesses written permission of a parent.);
- C. A **firearms licensee** may not sell any gun or ammunition to anyone under the age of 18 and may not sell a handgun or handgun ammunition to a **person under the age of 21**.

FORFEITURE OF FIREARMS, AMMUNITION & EXPLOSIVES.

18 U.S.C. §924(d) authorizes the seizure and forfeiture of firearms, ammunition and explosives involved in criminal offenses. However, strict time limitations are imposed. Consult the ATF or U.S. Attorney's Office as soon as possible for guidance on forfeiture issues.

TRACING OF FIREARMS:

Firearms information for **every firearm**, even if only identified during a field interview or traffic stop, should be sent to ATF for tracing and possible connection to other criminal activity.

DEFINITION OF "FIREARM":

Any weapon (including a starter gun) which will expel a projectile by means of an explosive or is designed or may be readily converted to do so. This includes the frame or receiver of any such weapon, any firearm muffler or silencer or any destructive device. A "**destructive device**" includes any explosive, incendiary or poison gas --- (i) bomb; (ii) grenade or (iii) similar device, or any combination of parts designed or intended to be converted into a destructive device, or from which a destructive device may be readily assembled. Does not include black powder or antique type firearms. **18 USC §921(3)**.

FOR INFORMATION OR QUESTIONS OR TO MAKE A REFERRAL FOR PROSECUTION, PLEASE CONTACT:

U.S. ATTORNEY'S OFFICE

District of Utah

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ATF

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