

Appendix D – Drug Trafficking Offense Chart
Elements and Statutory Maxima of Drug Trafficking Offenses Listed in 28 USC 994(h)

Statute	Offenses 1984	Statutory Maxima 1984	Offenses 2008	Statutory Maxima 2008
21 USC 841	Knowingly or intentionally (a)(1) manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; (a)(2) create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance	(b)(1)(A) – certain amounts of Schedule I or II narcotics, PCP or LSD -- 20 years/ 40 years “after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony ¹ under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final,” (hereinafter “one or more prior felony convictions”) (b)(1)(B) – Schedule I or II except as in subparagraphs (A) or (C) – 15 years/30 years after one or more prior felony	Knowingly or intentionally (a)(1) manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; (a)(2) create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance	(b)(1)(A) – certain amounts of certain Schedule I, II or III -- life/life if death or serious bodily injury or after a prior conviction for a “felony drug offense” ² (b)(1)(B) – certain amounts of certain Schedule I, II or III – 40 years/life if death or serious bodily injury and/or after a prior conviction for a “felony drug offense” (b)(1)(C) – certain amounts of Schedule I or II, gamma hydroxybutyric acid, or 1 g. flunitrazepam -- 20 years/ 30 years after a prior conviction for a “felony drug offense”/ life if death or serious bodily injury (b)(1)(D) – less than 50 kg.

¹ In 1984 and today, the “term ‘felony’ means any Federal or State offense classified by applicable Federal or State law as a felony.” See 21 U.S.C. §§ 802(13).

² In 1988, Congress changed the term to “felony drug offense,” defined as “an offense that is a felony under any . . . federal law . . . or . . . any law of a State or a foreign country . . . that prohibits or restricts conduct relating to narcotic drugs, marihuana, or depressant or stimulant substances.” See *Burgess v. United States*, 128 S. Ct. 1572, 1579 & n.4 (2008) (detailing legislative history). In 1994, the definition of “felony drug offense” was amended to include any offense punishable by imprisonment for more than one year, regardless of its classification by the convicting jurisdiction as a felony or a misdemeanor. *Id.*

	<p>(d) Possession of piperidine with intent to manufacture or knowing or having reasonable cause to believe it would be used to manufacture phencyclidine</p>	<p>convictions</p> <p>(b)(1)(C) – Schedule III or certain amounts of marijuana, hashish, hashish oil – 5 years/10 years after one or more prior felony convictions</p> <p>(b)(2) – Schedule IV – 3 years/6 years after one or more prior felony convictions</p> <p>(d) – 5 years</p>	<p>(b)(5) violates subsection (a) by cultivating or manufacturing a controlled substance on Federal land</p> <p>(b)(6) violates or attempts to violate subsection (a) and knowingly and intentionally uses poison, chemical or other hazardous substance on federal land and creates serious hazard, degrades or harms environment or natural resources, pollutes water</p>	<p>marihuana or 50 or more plants, 10 kg. hashish, 1 kg. hashish oil, Schedule III (gamma hydroxybutyric acid), or 30 mg. flunitrazepam -- 5 years/10 years after a prior conviction for a “felony drug offense”</p> <p>(b)(2) – Schedule IV -- 3 years/6 years after a prior conviction for a “felony drug offense”</p> <p>(b)(3) – Schedule V – 2 years after any prior drug conviction</p> <p>Same as above</p> <p>5 years</p>
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			<p>(b)(7) - With intent to commit crime of violence against an individual, violates subsection (a) by distributing a controlled substance or controlled substance analogue to that individual without her knowledge</p> <p>Listed chemicals –</p> <p>(c)(1) possession with intent to manufacture</p> <p>(c)(2) possessing or distributing with reasonable cause to believe it will be used to manufacture a controlled substance</p> <p>(c)(3) intentionally evading recordkeeping by receiving or distributing amounts small enough not to require reporting</p> <p>(d) - Boobytrap on federal property where controlled substance is being manufactured, distributed or dispensed (not specified in USSG 4B1.2 as a career offender predicate)</p>	<p>20 years</p> <p>20 years if List I chemical; otherwise 10 years</p> <p>20 years if List I chemical; otherwise 10 years</p> <p>10 years</p> <p>10 years/20 years after prior conviction(s) under this subsection</p>
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			(f)(1) – Knowingly distributes a listed chemical in violation of this subchapter except recordkeeping or reporting violation under section 830 (not specified in USSG 4B1.2 as a career offender predicate) (g) – Internet sale of date rape drugs	5 years 20 years
21 U.S.C. § 952(a)	Import any controlled substance in Schedule I or II or any narcotic drug in Schedule III, IV or V	<u>21 USC 960</u> (b)(1) certain amounts of narcotic drugs in Schedule I or II, PCP, LSD – 20 years (b)(2) controlled substance in Schedule I or II – 15 years (b)(3) less than certain amounts of marijuana or hashish or any amount in Schedule III, IV or V – 5 years <u>21 USC 962</u> twice that after one or more prior felony convictions (40, 30 or 10 years)	Import any controlled substance in Schedule I or II or ephedrine, pseudoephedrine, or phenylpropanolamine, or in Schedule III, IV or V	<u>21 USC 960</u> (b)(1) – life/life if death or serious bodily injury or after a prior conviction for a “felony drug offense” (b)(2) – 40 years/life if death or serious bodily injury and/or after a prior conviction for a “felony drug offense” (b)(3) – 20 years/ 30 years after a prior conviction for a “felony drug offense”/ life if death or serious bodily injury (d) 10 years for certain listed chemicals/ 20 years for other listed chemicals <u>21 USC 962</u> twice that for a “second or subsequent offense” (life, 80, 40, 20)
21 U.S.C. §	Bring or possess on board any	<u>21 USC 960</u>	Bring or possess on board any	<u>21 USC 960</u>

955	vessel, aircraft or vehicle of a carrier arriving in or departing from the US or US customs territory a controlled substance in Schedule I or II or a narcotic drug in Schedule III or IV	<p>(b)(1) certain amounts of narcotic drugs in Schedule I or II, PCP, LSD – 20 years</p> <p>(b)(2) controlled substance in Schedule I or II – 15 years</p> <p>(b)(3) less than certain amounts of marijuana or hashish or any amount in Schedule III, IV or V – 5 years</p> <p><u>21 USC 962</u> twice that after one or more prior felony convictions (40, 30 or 10 years)</p>	vessel, aircraft or vehicle of a carrier arriving in or departing from the US or US customs territory a controlled substance in Schedule I or II or a narcotic drug in Schedule III or IV	<p>(b)(1) – life/life if death or serious bodily injury or after a prior conviction for a “felony drug offense”</p> <p>(b)(2) – 40 years/life if death or serious bodily injury and/or after a prior conviction for a “felony drug offense”</p> <p>(b)(3) – 20 years/ 30 years after a prior conviction for a “felony drug offense”/life if death or serious bodily injury</p> <p>(d) 10 years for certain listed chemicals/20 years for other listed chemicals</p> <p><u>21 USC 962</u> twice that for a “second or subsequent offense” (life, 80, 40, 20)</p>
21 U.S.C. § 959	manufacture or distribute a controlled substance in Schedule I or II intending or knowing that such substance will be unlawfully imported into the US	<p><u>21 USC 960</u></p> <p>(b)(1) certain amounts of narcotic drugs in Schedule I or II, PCP, LSD – 20 years</p> <p>(b)(2) controlled substance in Schedule I or II – 15 years</p> <p>(b)(3) less than certain amounts of marijuana or hashish or any amount in Schedule III, IV or V – 5 years</p> <p><u>21 USC 962</u> twice that after one or more</p>	(a) manufacture or distribute a controlled substance in schedule I or II or flunitrazepam or listed chemical for purpose of unlawful importation (b) manufacture, distribute, or possess with intent to distribute a controlled substance or listed chemical on board an aircraft outside territorial jurisdiction	<p><u>21 USC 960</u></p> <p>(b)(1) – life/life if death or serious bodily injury or after a prior conviction for a “felony drug offense”</p> <p>(b)(2) – 40 years/life if death or serious bodily injury and/or after a prior conviction for a “felony drug offense”</p> <p>(b)(3) – 20 years/ 30 years after a prior conviction for a “felony drug offense”/life if death or serious bodily injury</p> <p>(d) 10 years for certain listed</p>

		prior felony convictions (40, 30 or 10 years)		chemicals/ 20 years for other listed chemicals <u>21 USC 962</u> twice that for a “second or subsequent offense” (life, 80, 40, 20)
46 U.S.C. § 70503	manufacture, distribute, or possess with intent to manufacture or distribute a controlled substance on board a vessel	<u>46 USC 70506; 21 USC 960</u> (b)(1) certain amounts of narcotic drugs in Schedule I or II, PCP, LSD – 20 years (b)(2) controlled substance in Schedule I or II – 15 years (b)(3) less than certain amounts of marijuana or hashish or any amount in Schedule III, IV or V – 5 years <u>46 USC 70506; 21 USC 962</u> twice that after one or more prior felony convictions (40, 30 or 10 years)	manufacture, distribute, or possess with intent to manufacture or distribute a controlled substance on board a vessel	<u>21 USC 960</u> (b)(1) – life/life if death or serious bodily injury or after a prior conviction for a “felony drug offense” (b)(2) – 40 years/life if death or serious bodily injury and/or after a prior conviction for a “felony drug offense” (b)(3) – 20 years/ 30 years after a prior conviction for a “felony drug offense”/ life if death or serious bodily injury (d) 10 years for certain listed chemicals/ 20 years for other listed chemicals <u>21 USC 962</u> twice that for a “second or subsequent offense” (life, 80, 40, 20)