

PUBLISHED VERSION: PROHIBITED PERSON DEFINITION
(Proposed Amendment 16 of User Friendly, Volume Two)

Synopsis of Proposed Amendment: *This proposed amendment modifies the definition of "prohibited person" in §§2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials) and 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) to refer to the relevant prohibited persons statutes for explosive and firearm offenses, respectively. (There is no statutory definition of "prohibited person".) The relevant statutory provision for §2K1.3 is 18 U.S.C. § 842(i), and for §2K2.1, the relevant statutory provisions are 18 U.S.C. § 922(g) and (n).*

The proposed amendment also clarifies that the relevant time to determine whether a person qualifies as a "prohibited person" is as of the time the defendant committed the instant offense. This clarification is consistent with the proposed amendment on prior felonies, which provides that increased base offense levels are only applied if the defendant committed the instant offense subsequent to sustaining certain felony convictions.

Proposed Amendment:

§2K1.3. Unlawful Receipt, Possession, or Transportation of Explosive Materials;
Prohibited Transactions Involving Explosive Materials

* * *

(a) Base Offense Level (Apply the Greatest):

- (1) **24**, if the defendant had at least two prior felony convictions of either a crime of violence or a controlled substance offense; ~~or~~
- (2) **20**, if the defendant had one prior felony conviction of either a crime of violence or a controlled substance offense; ~~or~~
- (3) **16**, if the defendant (A) ~~is~~ was a prohibited person at the time the defendant committed the instant offense; or (B) knowingly distributed explosive materials to a prohibited person; or

* * *

Commentary

* * *

Application Notes:

* * *

3. ~~"Prohibited person," as used in subsection (a)(3), means anyone who: (i) is under indictment for, or has been convicted of, a "crime punishable by imprisonment for a term exceeding one year," as defined at 18 U.S.C. § 841(l); (ii) is a fugitive from justice; (iii) is an unlawful user of, or is addicted to, any controlled substance; or (iv) has been~~

~~adjudicated as a mental defective or involuntarily committed to a mental institution. For purposes of subsection (a)(3), "prohibited person" means any person designated in 18 U.S.C. § 842(i).~~

* * *

§2K2.1. Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition

* * *

(a) Base Offense Level (Apply the Greatest):

- (1) **26**, if the offense involved a firearm described in 26 U.S.C. § 5845(a) or 18 U.S.C. § 921(a)(30), and the defendant had at least two prior felony convictions of either a crime of violence or a controlled substance offense; ~~or~~
- (2) **24**, if the defendant had at least two prior felony convictions of either a crime of violence or a controlled substance offense; ~~or~~
- (3) **22**, if the offense involved a firearm described in 26 U.S.C. § 5845(a) or 18 U.S.C. § 921(a)(30), and the defendant had one prior felony conviction of either a crime of violence or controlled substance offense; ~~or~~
- (4) **20**, if --

* * *

- (B) the offense involved a firearm described in 26 U.S.C. § 5845(a) or 18 U.S.C. § 921(a)(30); and the defendant (i) ~~is~~ was a prohibited person at the time the defendant committed the instant offense; or (ii) is convicted under 18 U.S.C. § 922(d); ~~or~~

* * *

- (5) **18**, if the offense involved a firearm described in 26 U.S.C. § 5845(a) or 18 U.S.C. § 921(a)(30); ~~or~~
- (6) **14**, if the defendant (A) ~~is~~ was a prohibited person at the time the defendant committed the instant offense; or (B) is convicted under 18 U.S.C. § 922(d); ~~or~~

* * *

Commentary

* * *

Application Notes:

* * *

6. *"Prohibited person," as used in subsections (a)(4)(B) and (a)(6), means anyone who: (i) is under indictment for, or has been convicted of, a "crime punishable by imprisonment for more than one year," as defined by 18 U.S.C. § 921(a)(20); (ii) is a fugitive from justice; (iii) is an unlawful user of, or is addicted to, any controlled substance; (iv) has been adjudicated as a mental defective or involuntarily committed to a mental institution; (v) being an alien, is illegally or unlawfully in the United States; (vi) is subject to a court order that 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 as defined in 18 U.S.C. § 922(d)(8); or (vii) has been convicted in any court of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(a)(33). For purposes of subsections (a)(4)(B) and (a)(6), a "prohibited person" is any person designated in 18 U.S.C. § 922(g) or § 922(n).*

