



Weapon Enhancement

18 U.S.C. § 924(c) and §2K2.4, Application Note 4

Generally, if a sentence under this guideline (§2K2.4) is imposed in conjunction with a sentence for an underlying offense you do not apply any specific offense characteristic for possession, brandishing, use, or discharge of an explosive or firearm when determining the sentence for the underlying offense or a related offense such as felon in possession.

If you are charged with an 18 U.S.C § 924(c) and another offense – what specific offense characteristics (SOC's) will not apply?

The conviction under 18 U.S.C. § 924(c) accounts for the firearm behavior. The guidelines prevent double counting for the same conduct by prohibiting an increase for the possession, brandishing, use, or discharge of an explosive or firearm when determining the sentence for the underlying offense or a related offense such as felon in possession.

	Related Offense	SOCs not applicable if there is a 924(c) charge
18 U.S.C. § 924(c) +	Drug Trafficking 21 U.S.C. § 841(a)(1)	⊗ §§2D1.1(b)(1) & (b)(2)
	Felon in Possession of a Firearm 18 U.S.C. § 922(g)	⊗ §2K2.1(b)(6)(B)
	Bank Robbery 18 U.S.C. § 2113(a)	⊗ §2B3.1(b)(2)

If the defendant is convicted of 18 U.S.C. § 924(c), the guideline sentence is the minimum term of imprisonment required by statute.

18 U.S.C. § 924(c)(1)(A) - Penalties

- (i) possession - not less than 5 years;
- (ii) brandishing - not less than 7 years; and
- (iii) discharging - not less than 10 years.



Scenario

Mr. Howard's home was the subject of a search warrant where the law enforcement officers found two firearms and 35 grams of methamphetamine. The drugs and guns were found together in a locked box in the defendant's closet. Defendant Howard plead guilty to the following offenses:

Count 1

Conspiracy to distribute methamphetamine in violation of 21 USC §§ 846, 841(a)(1) and (b)(1)(C)
– Statutory maximum of 20 years.

Count 2

Felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) – Statutory maximum of 10 years.

Count 3

Possession of a firearm in connection with a drug trafficking offense in violation of 18 U.S.C. § 924(c)
– mandatory minimum 5 years.

Does the specific offense characteristic for possession of a dangerous weapon at §2D1.1(b)(1) apply in this case?

No. Pursuant to §2K2.4, Application Note 4, if a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense characteristic for possession, brandishing, use, or discharge of an explosive or firearm when determining the sentence for the underlying offense. A sentence under this guideline accounts for any explosive or weapon enhancement for the underlying offense of conviction, including any such enhancement that would apply based on conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct).

Does the specific offense characteristic for possessing a firearm in connection with another felony offense at §2K2.1(b)(6)(B) apply in this case?

No. If the explosive or weapon that was possessed, brandished, used, or discharged in the course of the underlying offense also results in a conviction that would subject the defendant to an enhancement under §2K2.1(b)(6)(B) (pertaining to possession of any firearm or ammunition in connection with another felony offense), do not apply that enhancement. A sentence under this guideline accounts for the conduct covered by these enhancements because of the relatedness of that conduct to the conduct that forms the basis for the conviction under 18 U.S.C. § 924(c)§2K2.4, App. Note 4.

Does the cross reference at §2K2.1(c)(1) apply?

Possibly. The guidelines do not preclude the application of the cross reference at §2K2.1(c)(1). The application of the cross reference, however, hinges on whether the firearm is cited in the offense of conviction. In this case if at least one of the firearms is cited in the indictment, the cross reference could be applied to the drug guideline if the resulting offense level is greater than determined under §2K2.1.

See also [Podcast Episode 13: What is the Effect of 18 U.S.C. § 924\(c\) on Weapons Enhancements?](#)