

Statutes Affected by *Apprendi v. New Jersey*

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Introduction

On June 26, 2000, the Supreme Court held in *Apprendi v. New Jersey* that, except for prior convictions, any fact which increased the statutory maximum punishment must be treated as an essential element of the offense, which must be charged in the indictment and proved to, and found by, a jury beyond a reasonable doubt. Justice Thomas's opinion in *Apprendi* strongly suggests that the Court's exception regarding prior convictions may be subject to reconsideration in the future; thus, these statutes are also listed here.

Statute Affected

Indictment/Jury Facts

Title 7

§13 (Commodities futures trading)

Amount of profits

§13b (Manipulating market price)

Amount of monetary gain

§270 (Warehouse licenses)

Value of property involved

§2024 (Food stamp fraud)

Value of coupons, cards, or access devices; prior conviction

Title 8

§1324 (Harboring aliens)

Each alien in respect to whom a violation occurs; offense done for commercial advantage; offense done for private financial gain; causes; serious bodily injury; places in jeopardy the life of any person; death

Two prior violations

§1325 (Illegal entry)

Prior commission of offense

§1326 (Illegal reentry)

Removal subject to felony or other listed convictions; removal subject to aggravated felony conviction; previously

Statute Affected

Indictment/Jury Facts

excluded as security threat; previously removed as alien terrorist; entered without permission of Attorney General; previously removed with uncompleted criminal sentence

Title 15

§645(c) (Concealment of SBA property)

Value of property

§714m (Larceny from Commodity Credit Corp.)

Amount or value of property

Title 16

§413 (Injures structures or plants on military parks)

Number of items injured

§668 (Bald or golden eagles)

Second or subsequent violation

§707 (Migratory birds)

Taken with intent to sell or barter; sell or barter

§773e, g (Northern Pacific halibut)

Use dangerous weapon; engages in conduct causing bodily injury to any officer; places officer in fear of imminent bodily injury

§973c, e (South Pacific tuna)

Use dangerous weapon; engages in conduct causing bodily injury to any officer; places officer in fear of imminent bodily injury

§1030 (Northern Pacific fisheries)

Use dangerous weapon; engages in conduct causing bodily injury to any officer; places officer in fear of imminent bodily injury

§1859 (Fisheries)

Use dangerous weapon; engages in conduct causing bodily injury to any officer; places officer in fear of imminent bodily injury

§3373 (Illegally taken fish & wildlife)

Importation or exportation of fish, wildlife, or plants; seel or purchase fish, wildlife, or plants

Statute Affected

§5010 (Anadramous fish)

Title 18

§ 13 (DUI on federal jurisdiction)

§ 33 (Destruction of motor vehicle)

§ 36 (Drive-by shooting)

§ 37 (Airport violence)

§ 43 (Animal enterprise terrorism)

§ 111 (Assaulting or resisting officers)

§ 112 (Assault on foreign officials)

§ 113 (Assaults w/in federal jurisdiction)

§ 115 (Threatening official's family)

Indictment/Jury Facts

Use dangerous weapon; engages in conduct causing bodily injury to any officer; places officer in fear of imminent bodily injury

Minor's presence; minor's serious bodily injury; death of minor; law of state does not provide additional term for above-facts

Motor vehicle carried high-level radioactive waste; at the time of the violation; carried spent nuclear fuel

Kills a person; the killing is a first degree murder; the killing is a murder other than first degree

Death of a person; results from prohibited conduct

Causes serious bodily injury to another individual; causes the death of an individual

Uses; a deadly or dangerous weapon; in the commission of the described acts; inflicts bodily injury

Uses; a deadly or dangerous weapon; in the commission of the described acts; inflicts bodily injury

With dangerous weapon; intent to do bodily harm; without just cause or excuse; intent to commit a felony; intent to commit murder; victim under 16; serious bodily injury; substantial bodily injury to victim under 16

Uses; a deadly or dangerous weapon; in the commission of the described acts; inflicts bodily injury; death;[Note: An argument can be made that §1201(g)(2)

Statute Affected

Indictment/Jury Facts

	<p>makes the following <u>Apprendi</u> facts: intentional maltreatment; life-threatening; sexually exploited; placement in care of person without legal right in exchange for money; permitting child to be subject to conduct of other]</p> <p>All factors distinguishing first degree murder from second degree</p>
<p>§ 201 (Bribery)</p>	<p>Monetary equivalent of the thing of value;</p> <p>Offense occurred in connection with criminal trial; act involves physical force or threat of physical force; killing; attempted killing; offense committed against petit juror; class A or B felony charged</p>
<p>§§ 203, 204, 205, 207, 208, 209</p>	<p>Willful conduct (see §216)</p>
<p>§ 212 (Offer of loan or gratuity to bank examiner)</p>	<p>Amount of money loaned or amount of gratuity</p>
<p>§ 213 (Acceptance of loan or gratuity by bank examiner)</p>	<p>Amount of money loaned or amount of gratuity</p>
<p>§ 215 (Receipt of commissions or gifts for procuring loans)</p>	<p>Value of thing given</p>
<p>§ 228 (Failure to pay child support)</p>	<p>Travels in interstate/foreign commerce; with the intent to evade a support obligation; support obligation unpaid for 2 years; support obligation greater than \$10,000; second or subsequent offense</p>
<p>§229A (Chemical weapons)</p>	<p>Results in death of another person</p>
<p>§229B (Criminal forfeiture)</p>	<p>Property involved in offense; property and proceeds derived from violations; property used to commit or facilitate violation</p>

Statute Affected

Indictment/Jury Facts

§241 (Conspiracy against rights)

Death of another; kidnapping; attempted kidnap; aggravated sexual abuse; attempted aggravated sexual abuse; attempt to kill

§242 (Deprivation of rights under color of law)

Bodily injury; use of a dangerous weapon/explosives/fire; death; kidnapping; attempted kidnap; aggravated sexual abuse; attempted aggravated sexual abuse; attempt to kill

§245 (Federally protected activity)

Bodily injury; use of a dangerous weapon/explosives/fire; death; kidnapping; attempted kidnap; aggravated sexual abuse; attempted aggravated sexual abuse; attempt to kill

§247 (Damage to religious property; obstruction)

Death of another; kidnapping; attempt to kidnap; aggravated sexual abuse; attempted aggravated sexual abuse; attempt to kill; bodily injury caused by fire or explosive; use of a dangerous weapon, explosives or fire

§248 (Freedom of access to clinic entrances)

Bodily injury; death; second or subsequent offense; exclusively non-violent physical obstruction

§288 (False postal loss claim)

Value of claim

§351 (Assassinate, kidnap or assault certain officials)

First degree murder (and elements defined in §1111); voluntary manslaughter (and elements defined in §1112); death; use of dangerous weapon, personal injury

§373 (Solicitation to commit crime of violence)

Crime solicited

§506 (Seals of depts. or agencies)

Intent or effect of; facilitating; an alien's; application for Federal benefits; to which the alien is not entitled

§521 (Criminal street gangs)

Participates in criminal street gang; knowledge that fellow members are engaged in a continuing series of offenses; intends to promote or further the felonious activities of the gang; intends to maintain or increase personal

Statute Affected**Indictment/Jury Facts**

§597 (Expenditures to influence voting)	Willful
§599 (Promise of appointment by candidate)	Willful
§641 (Theft public money)	Value of property
§§643, 644, 645, 646, 647, 648, 649, 650	Amount embezzled
§§651, 652	Amount withheld
§§653, 654	Amount embezzled
§655	Amount taken
§656, 657	Amount embezzled or misapplied
§658	Value of property
§659	Amount or value of money or goods
§661	Value of property taken; property taken from person of another
§662	Value of property stolen
§665	Amount embezzled or misapplied
§669	Value of property
§704 (Military medals, decorations)	If medal is Congressional Medal of Honor
§831 (Prohibited transactions involving nuclear materials)	Knowingly causes; death; extreme indifference to the life of an individual; knowingly; engages in reckless conduct that causes death or serious bodily injury
§844	Personal injury; injuries a direct or proximate cause; death; creates substantial risk of injury; use of fire or explosives to commit felony; carries explosive during felony; second or subsequent conviction
§872 (Extortion by U.S. officers or employees)	Amount extorted or demanded

Statute Affected**Indictment/Jury Facts**

§893 (Financing extortionate credit extension)

Value of the money or property advanced

§922(g) & §924(e)

Three previous convictions; for violent crime or serious drug offense; committed on different occasions

§922(x) & §924 (Transfer of firearm to juvenile)

Knowing or reasonable cause to know; that juvenile intended to carry, possess, discharge gun; in commission of crime of violence

§924(c) (Use or carry firearm during crime)

During; in relation to; crime of violence or drug trafficking crime; uses or carries; or possesses firearm; in furtherance of such crime; firearm brandished; firearm discharged; short-barreled rifle or shotgun; semiautomatic assault weapon; machinegun; destructive device; equipped with silencer or muffler; second or subsequent offense; causes; death; through use of firearm; murder; manslaughter; conspiracy; conspiracy involves machinegun or destructive device or equipped with silencer or muffler

§929 (Restricted ammunition)

Uses or carries firearm; in possession of; armor piercing ammunition

§930 (Possession of firearms in federal facilities)

Intent that weapon be used; in commission of crime; kills or attempts to kill; any person; in course of violation or in course of attack on facility; involving use of firearm

§956 (Conspiracy to kill, kidnap, injure in foreign country)

Conspiracy to murder, kidnap or maim

§1003 (Demands against U.S.)

Sum or value obtained

§1025 (False pretenses on high seas)

Amount, value, or face value of anything obtained

§1028 (Fraud re identification documents)

ID document appears to be issued by US; birth certificate; driver's license; personal ID card; more than 5 documents; obtaining anything of value aggregating \$1,000; during 1 year

Statute Affected**Indictment/Jury Facts**

§1029 (Fraud re access devices)	period; to facilitate drug trafficking crime; in connection with crime of violence; after prior conviction becomes final; to facilitate; international terrorism
§1030 (Computer fraud)	Offense occurs after a prior conviction under this section
§1031 (Major fraud against U.S.)	Offense occurs after a prior conviction under this section; offense committed for purposes of commercial advantage or private financial gain; in furtherance of criminal or tortious act; value of information received exceeds \$5,000;
§1033 (Insurance related crimes)	Gross loss or gain is \$500,000 or greater; conscious or reckless risk of serious personal injury
§1071 (Concealing person from arrest)	Statement jeopardized; safety and soundness of insurer; significant cause; of insurer being placed in conservation, rehabilitation or liquidation; amount or value embezzled
§1091 (Genocide)	Felony warrant or process; after conviction
§1111 (Murder)	Death
§1112 (Manslaughter)	All factors distinguishing first degree murder from second degree
§1154 & §1156 (Intoxicants in Indian Country)	All factors distinguishing voluntary manslaughter from involuntary
§1158 & §1159 (Counterfeiting Indian goods)	Subsequent offense
§1163 (Theft from Indian tribes)	Subsequent offense
§1167 & §1168 (Theft from Indian gaming)	Value of property taken
	Value of property taken

Statute Affected**Indictment/Jury Facts**

§1170 (Trafficking in remains and items)

Subsequent violation

§1201 (Kidnapping)

Death; [Note: An argument can be made that §(g)(2) makes the following Apprendi facts: intentional maltreatment; life-threatening; sexually exploited; placement in care of person without legal right in exchange for money; permitting child to be subject to conduct of other]

§1203 (Hostage taking)

Death

§1302 (Mailing lottery tickets)

Subsequent offense

§1341 (Mail fraud)

Affects a financial institution

§1343 (Wire fraud)

Affects a financial institution

§1347 (Health care fraud)

Serious bodily injury; death

§1361 (Damage to govt. property or contracts)

Amount of damage

§1363 (Buildings w/in federal jurisdiction)

Dwelling; the life of any person placed in jeopardy

§1365 (Tampering with consumer products)

Serious bodily injury; death

§1366 (Destruction of energy facility)

Amount of damages

§1425, §1426, §1427 (relating to citizenship papers)

To facilitate an act of international terrorism; to facilitate a drug trafficking crime; third or more offense

§1461 & §1462 (Mailing and importing obscene matter)

Each subsequent offense

§1503 (Influencing juror)

Offense occurred in connection with criminal trial; act involves physical force or threat of physical force; killing; attempted killing; offense committed against petit juror; class A or B felony charged

§1512 (Witness tampering)

Murder; killing; attempt; offense occurs in connection with criminal case

Statute Affected**Indictment/Jury Facts**

§1513 (Witness retaliation)	Killing; attempt; offense occurs because of attendance at or testimony in a criminal case
§1541, §1542, §1543 & §1544 (Passport offenses)	Offense committed to facilitate an act of international terrorism; offense committed to facilitate a drug trafficking crime; third or more offense
§1546 (Visa fraud, misuse)	Offense committed to facilitate an act of international terrorism; offense committed to facilitate a drug trafficking crime; third or more offense
§1707 (Theft of Postal Service property)	Value of property taken
§1711 (Misappropriation of postal funds)	Amount or value of money or property misappropriated
§1716 (Injurious articles as nonmailable)	Death results from the crime
§1720 (Canceled stamps and envelopes)	Defendant is employed by Postal Service
§1735 & §1737 (Sexually-oriented advertisements, mail)	Second or subsequent offense
§1751 (Presidential assassination, kidnapping)	Death results to the victim; if assault involved use of dangerous weapon; if assault involved personal injury
§1864 (Hazardous devices on federal lands)	Death; serious bodily injury; bodily injury; aggregate property damage or avoidance costs exceeding \$10,000; prior conviction
§1920 (False statement re federal employee compensation)	Amount of benefits falsely obtained
§1952 (Racketeering travel)	Death results from the prohibited action.
§1956 (Money laundering)	Value of property involved in transaction; value of monetary instrument or funds involved
§1957 (Monetary transactions)	Value of amount of criminally derived property
§1958 (Murder for hire)	Personal injury; death

Statute Affected**Indictment/Jury Facts**

§1959 (Violent crimes to aid racketeering)

Murder; kidnapping; maiming; assault with dangerous weapon; assault resulting in serious bodily injury; attempting to commit murder or kidnapping; conspiracy to commit murder or kidnapping

§1962 & §1963 (RICO)

Gross profits or other proceeds

§1992 (Wrecking trains)

Death; train carried high-level nuclear waste.

§2113 (Bank larceny)

Value of property or money taken

§2113 (Bank robbery)

Assaults or puts another's life in jeopardy; by use of dangerous weapon; kills any person; forces another to accompany

§2114 (Assault mail custodian)

Wounds custodian or puts custodian's life in jeopardy; by use of dangerous weapon; subsequent offense

§2118 (DEA robbery)

Assaults or puts any person's life in jeopardy; by use of dangerous weapon; kills any person

§2119 (Motor vehicle theft (carjacking))

Serious bodily injury; death

§2231 (Assault or resistance to search warrant)

Use of dangerous weapon

§2236 (Warrantless searches)

Subsequent offense

§2241 (Aggravated sexual abuse)

Previous conviction

§2244 (Abusive sexual contact)

Victim under 12

§2251 (Sexual exploitation of children)

Prior conviction; two or more prior convictions; death

§2252 & §2252A (Child pornography)

Prior conviction

§2257 (Record keeping re sexual conduct)

Prior conviction

§2260 (Sexual depictions of minors for importation)

Prior conviction

Statute Affected**Indictment/Jury Facts**

§2261 & §2261A (Interstate domestic violence & stalking)	Death; permanent disfigurement; life threatening bodily injury; serious bodily injury; use of dangerous weapon
§2262 (Interstate violation of a protection order)	Death; permanent disfigurement; life threatening bodily injury; serious bodily injury; use of dangerous weapon
§2280 (Violence against maritime navigation)	Death
§2281 (Violence against maritime fixed platforms)	Death
§2319 (Criminal infringement of a copyright)	Reproduction or distribution; during 180-day period; at least ten copies; of copyrighted work; value of materials exceeds \$2,500; second or subsequent offense
§2319A (Unauthorized recording of live performances)	Second or subsequent offense
§2320 (Trafficking in counterfeit goods or services)	Second or subsequent offense
§2322 (Chop shops)	Prior conviction
§2326 (Telemarketing fraud)	Targeted persons over age 55; victimized 10 or more persons over age 55
§2331 & §2332 (Terrorism)	Murder; voluntary manslaughter; intent to cause serious bodily injury; to U.S. national; causes serious bodily injury; to U.S. national
§2332a (Weapons of mass destruction)	Death
§2332b (International terrorism)	Killing; death; kidnapping; maiming; assault with dangerous weapon; assault resulting in serious bodily injury; destroying real or personal property
§2340A (Torture)	Death
§2421-§2426 (Transportation for illegal sexual activity)	Prior conviction
§2441 (War crimes)	Death
§2511 (Wire interception)	Second or subsequent offense; offense for tortious purpose; offense for illegal

Statute Affected

Indictment/Jury Facts

§2701 (Unlawful access to stored communications)

purpose; offense for commercial advantage; offense for commercial gain; scrambled, encrypted, or modulated communication; communication intended to be private

Communication is radio portion of cellular telephone communication; communication is cordless telephone communication; transmitted between handset and base unit; communication is public land mobile radio service; communication is paging service

§3146 (Failure to appear)

Offense committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain; subsequent offense

Underlying offense charged

§3559(c) ("Three Strikes")

Two or more prior convictions for serious violent felonies; one serious violent felony and one serious drug offense; offenses committed after defendant's preceding felony

Victim under 14; victim dies as a result of offense; intentional killing; intentional infliction of serious bodily injury resulting in death; intentional participation in act contemplating death or use of lethal force; intentional act of violence knowingly creating grave risk of death to another and with reckless disregard

Title 19 [Not done]

Title 20 [Not done]

Title 21 [Incomplete]

§841 (Manufacture, distribute, PWID)

Nature of substance involved; quantity of substance involved; death; serious

Statute Affected

Indictment/Jury Facts

	bodily injury; resulting from use; prior conviction; two or more prior convictions
	Cultivates on federal property
	Knowing or intentional use of hazardous substance; creates serious hazard; harms environment; pollutes water
	Intent to commit crime of violence; against individual; distribution without person's knowledge
§841 (Possession of listed chemical)	Intent to manufacture controlled substance; distributes listed chemical; knowing; reasonable cause to believe listed chemical will be used to manufacture controlled substance
§841 (Boobytraps)	Prior conviction
§842 (Registrant distributions)	Prior conviction
§843 (Paperwork violations)	Prior conviction; intent to manufacture or facilitate manufacturing of methamphetamine
§844 (Simple possession)	Prior conviction; two or more prior convictions; mixture or substance containing cocaine base; amount of mixture or substance; substance is flunitrazepam
§846 (Attempt and conspiracy)	[Same facts as § 841]
§848(Continuing criminal enterprise)	Prior conviction; person is leader of enterprise; violation involved 300 times quantity; nature of substance; enterprise received \$10 million in gross receipts during 12 months; intentional killing; death; counsels intentional killing; killing target is law enforcement officer
§849 (Transportation safety offenses)	Distributing or possessing within 1,000 feet of truck stop or safety rest area; prior offense

Statute Affected

Indictment/Jury Facts

§859 (Distribution to persons under age 21)

Distribution to persons under age 21;
prior conviction

§860 (School zone)

Offense committed within 1,000 feet of school
real property, playground, public housing;
within 100 feet of youth center, public pool,
video arcade; prior conviction

§860 (Employing children)

Uses persons under age 18 to violate
section; uses persons under 18 to avoid
detection

§861 (Underage employees, pregnant person)

Prior conviction; knowingly providing
controlled substance analogue; to
person under 18; person used is 14 or
under

§960 (Import and export)

Nature of substance; quantity of
substance; death; serious bodily injury;
resulting from use; prior conviction;

Imports or exports; listed chemical; with
intent to manufacture controlled
substance; knowing or reasonable
cause to know; chemical will be used to
manufacture controlled substance

Second or subsequent offense

Title 22 [Not done]

Title 26 [Not done]

Title 28 [Not done]

Title 29 [Not done]

Title 30 [Not done]

Title 31 [Not done]

Title 33 [Not done]

Statute Affected

Indictment/Jury Facts

Title 38 [Not done]

Title 41 [Not done]

Title 42 [Not done]

Title 43 [Not done]

Title 45 [Not done]

Title 46 [Not done]

Title 47 [Not done]

Title 49 [Not done]

Title 50 [Not done]