

FEDERAL DRUG CRIMES

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FEDERAL JURISDICTION

- Crime of general applicability
- Jurisdiction not dependent upon whether drug crime occurs in Indian Country
- Drugs include Schedules I through IV of the Controlled Substances Act, and precursor chemicals
- Primary drugs most commonly charged:
 - Heroin
 - Methamphetamine
 - Cocaine
 - MDMA
 - Marijuana
 - LSD

TITLE 21, UNITED STATES CODE

■ Section 841

- 841(a)(1) – knowingly and intentionally manufacture, distribute, dispense, or possess with intent to manufacture, distribute, or dispense a controlled substance
- 841(a)(2) – knowingly and intentionally create, distribute, dispense, or possess with intent to distribute or dispense a counterfeit substance
 - rarely charged

■ Section 841(b)(1)(A) = PENALTIES

- mandatory minimum of 10 years and max of life
- max of \$10 million dollar fine
- at least 5 years of supervised release
 - 1 kg or more of heroin
 - 5 kg or more of cocaine
 - 280 g or more of cocaine base
 - 1000 kg or more of marijuana, or 1000+ marijuana plants
 - 50 g or more of pure meth; or 500 g or more of a mixture and substance of meth

TITLE 21, UNITED STATES CODE

■ Section 841(b)(1)(B) = PENALTIES

- mandatory minimum of 5 years and max of 40 years
- max of \$5 million dollar fine
- at least four years of supervised release
 - 100 g or more of heroin
 - 500 g or more of cocaine
 - 28 g or more of cocaine base
 - 100 kg or more of marijuana, or 100 or more plants
 - 5 g or more of meth; or 50 g or more of a mixture and substance of meth

■ Section 841(b)(1)(C) = PENALTIES

- maximum of 20 years
- maximum of \$1 million dollar fine
- at least three years of supervised release
 - Heroin, cocaine, cocaine base, meth of amounts less than above

TITLE 21, UNITED STATES CODE

- **Section 841(b)(1)(D) = PENALTIES**
 - maximum of 5 years
 - maximum fine of \$250,000
 - at least 2 years supervised release
 - Less than 50 kg of marijuana or 50 marijuana plants regardless of weight

- **Section 846, Conspiracy and Attempt**
 - same penalties as substantive crime

- **Section 844, Simple Possession**
 - possession of controlled substances in amounts less than those prescribed in Section 841
 - federal misdemeanor offense
 - *rarely charged*

OTHER DRUG RELATED CRIMES

■ 21 USC 843(b), Use of Communication Facility

- use of a communication facility (i.e. cell phone) to facilitate a drug crime
- Maximum of 4 years
- Maximum of \$250,000 fine

■ 18 USC 1952, Travel Act

- travels in interstate or foreign commerce, uses the mail, or uses any facility in interstate or foreign commerce, with intent to --
 - distribute proceeds of any unlawful activity (i.e. drug distribution), or
 - promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any unlawful activity
 - AND thereafter performs or attempts to perform one of those acts
 - ❖ Max penalty of five years and \$250,000 fine

DRUG TRAFFICKING IN INDIAN COUNTRY

- USAO filing thresholds are 'soft'
 - 841(b)(1)(C) drug amounts will be considered
- Will consider any offender (Native or non-Native):
 - poses serious public safety problem to Tribe
 - history of drug trafficking on and off reservation
 - possession/use of firearms
 - history of violence
- Investigations initiated by tribal or county law enforcement can be directly referred to USAO
- Search warrants and evidence seizure will need to meet federal evidentiary standards
- Confidential informants and sources generally need to be testimonial
 - consult with AUSA for exceptions
- DREAM Court

CURRENT IC DRUG CASES

- *United States v. Kenneth Elofson et al*
 - 5 defendants charged with heroin and methamphetamine sales to three confidential informants
 - County and FBI investigation
 - multiple gram sales (i.e. 10-40 grams)
 - involving Makah and Lower Elwha Tribes
 - Defendants are Native
- *United States v. Krystal George*
 - Possession with intent to distribute
 - Suquamish Tribe
 - 43g heroin, 5g meth
- *United States v. Jose Martinez*
 - Distribution of heroin and meth
 - Suquamish Tribe
 - less than one gram each of meth and heroin
 - three firearms in trailer residence with drug residue