

# What Time Is It for the ACCA?: Supreme Court Clarifies When State Drug Offenses Qualify as “Serious Drug Offenses”

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The Armed Career Criminal Act (ACCA) imposes a mandatory minimum term of imprisonment when a person convicted of unlawfully possessing a firearm has three or more prior violent felony or serious drug (controlled substance) predicate convictions. In *Brown v. United States* (a case previewed in an earlier [Sidebar](#)), the Supreme Court [held](#) that a state drug conviction qualifies as a controlled substance predicate conviction for purposes of sentencing under the ACCA if the federal and state definitions of the drug involved matched *at the time of the prior state drug offense*.

## ACCA

The ACCA ([18 U.S.C. § 924\(e\)](#)) establishes a mandatory minimum sentence of 15 years in prison for defendants, convicted of unlawful firearm possession, who have three or more prior convictions for violent felonies or serious drug offenses. An ACCA “serious drug offense” is (1) an offense punishable by a maximum term of imprisonment of ten years or more that is (2)(i) an offense under federal controlled substance laws, or (ii) “an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the [federal] Controlled Substance Act (21 U.S.C. [§] 802)).” A prior state drug offense qualifies as a “serious drug offense” only if the state’s definition of the drug involved [matches](#) the federal definition of that drug.

The ACCA is no stranger to the Supreme Court, which has been called upon to issue no fewer than two dozen written [decisions](#) construing its provisions. In *Brown v. United States* and a companion case, the Court was recently called upon to address the question of *when* a state drug definition must match the federal definition for purposes of qualifying a prior state drug offense as a “serious drug offense” under the ACCA.

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## Background of Supreme Court Case

The Court addressed *Brown* along with a companion case, *Jackson v. United States*, in a single decision. *Brown* involved a federal firearm offender who had four Pennsylvania marijuana trafficking convictions between 2009 and 2014, at which time federal and Pennsylvania law defined “marijuana” the same way. In 2018, however, while Brown’s firearm conviction was pending, Congress redefined “marijuana” to exclude hemp. Thereafter, at sentencing for his firearm offense, Brown argued his state convictions no longer qualified as “serious drug offenses” since federal and state law no longer matched. The United States Court of Appeals for the Third Circuit affirmed his sentence on the ground that the federal and state definitions of marijuana matched on the date of his federal firearm conviction.

*Jackson* involved a defendant who unlawfully possessed a firearm in 2017, was charged in 2019, and was sentenced in 2021. The defendant had 1998 and 2004 Florida state convictions for cocaine trafficking. At the time of the drug convictions, federal and Florida law provided comparable definitions of “cocaine.” Then, in 2015, federal law legalized a radioactive cocaine derivative, ioflupane, creating a mismatch in the federal and state definitions of “cocaine.” The United States Court of Appeals for the Eleventh Circuit affirmed Jackson’s sentence on the ground that the federal and state definitions of cocaine matched when he committed the state drug offenses, notwithstanding the later parting of the ways.

## Supreme Court’s Decision

The Supreme Court agreed to hear the cases, as they reflected an interpretative dispute among the federal appellate courts as to when federal and state drug definitions must match for ACCA purposes. In a 6-3 decision, the Court ruled that a state drug conviction qualifies as a predicate “serious drug offense” under the ACCA if the federal and state definitions of the drug involved matched at the time of the prior state drug offense. The majority opinion rested the decision on the Court’s earlier ruling in *McNeill v. United States*, on the text of the ACCA, and on Congress’s purpose enacting the ACCA.

In *McNeill*, the Court concluded that the 10-year-or-greater maximum penalty required for qualifying “serious drug offenses” must involve a federal-state match at the time of prior drug offenses—in other words, so long as the state offense carried at least a 10-year penalty at the time of its commission, it meets the penalty requirement for ACCA purposes. The Court in *Brown* explained that *McNeill* read the ACCA to require sentencing courts to assess a defendant’s culpability and dangerousness by a “backward-looking examination” of his prior offenses at the time he committed them.

Additionally, the Court determined that the wording in successive ACCA provisions suggests an equality of federal and state law treatment that would be lost under any other interpretation. Section 924(e)(2)(A)(i) and Section 924(e)(2)(A)(ii) define the term “serious drug offense” using the same definition of drugs (controlled substances) under the federal Controlled Substances Act (CSA). According to the Court, “Congress clearly indicated that past conduct that violated the CSA is probative of a defendant’s ‘culpability and dangerousness’ . . . even if the federal drug schedule is later amended.”

Finally, according to the Court in *Brown*, ACCA’s purpose relates to, and its focus is upon, the predicate offenses: “[b]ecause defendants who have repeatedly committed ACCA predicate offenses are especially likely to inflict grave harm when in possession of a firearm, ACCA imposes a higher punishment when they do so.” As such, in the Court’s view, it “makes sense to ask . . . whether a prior offense met ACCA’s definition of seriousness—and thus suggested future danger—at the time it was committed.”

For the three dissenting Justices (Justice Jackson, joined by Justices Kagan and Gorsuch), the question was less complicated. In their minds, the text of the ACCA resolves the issue when in a “straightforward” statement “it establishes that courts should apply the drug schedules in effect at the time of the federal firearms offense that triggers ACCA’s potential application.”

## Considerations for Congress

The *Brown* Court's determination that a match between federal and state drug definitions must exist at the time of the commission of the state predicate drug offense precludes the suggestion that other dates may qualify, such as the date of the commission of the firearms offense, or the date of sentencing for the firearms offense.

Subject to constitutional limitations, Congress is free to recast or abandon the ACCA to whatever extent it prefers. For example, Congress might amend the ACCA to provide that going forward, the federal and state definitions of the controlled substance involved in a prior conviction must match at the time of sentencing for the firearm possession offense – rather than at the time of the prior state conviction as the *Brown* Court concluded.

The ACCA aside, possession of a firearm by a defendant with a prior felony conviction is currently punishable under 18 U.S.C. §§ 922(g)(1), 924(a)(8) by imprisonment for up to 15 years regardless of the specifics of the prior felony conviction (with some limited exceptions). Congress is free to alter the penalty levels for that offense (within constitutional limits).

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