

1 removal is outstanding, commits a felony after unlawfully
2 reentering the United States and while remaining unlawfully
3 present, the penalty for the felony offense must be increased in
4 the following manner:

5 (a) For a first offense, the individual's maximum term must be
6 increased by not more than 50% of the longest term prescribed by
7 law for a first conviction of that offense.

8 (b) For a second or subsequent offense, the individual's
9 maximum term must be increased to not more than twice the longest
10 term prescribed by law for a first conviction of that offense.

11 Sec. 12b. (1) If the commission of a misdemeanor or felony was
12 for the purpose of benefiting, promoting, or furthering the
13 interests of a transnational crime organization, the penalty for
14 the misdemeanor or felony must be increased as follows:

15 (a) For the first offense, the individual's maximum term must
16 be increased by not more than 50% of the longest term prescribed by
17 law for a first conviction of that offense.

18 (b) For a second or subsequent offense, the individual's
19 maximum term must be increased to not more than twice the longest
20 term prescribed by law for a first conviction of that offense.

21 (2) As used in this section, the term "transnational crime
22 organization" means an organization that routinely facilitates the
23 international trafficking of drugs, weapons, or human beings.

24 Sec. 12c. (1) In a criminal action, the prosecuting attorney
25 may seek to enhance the sentence of the defendant as provided under
26 section 12a or 12b of this chapter by filing a written notice of
27 the prosecuting attorney's intent to do so not later than 21 days
28 after the defendant's arraignment on the information charging the
29 underlying offense or, if arraignment is waived, not later than 21

1 days after the filing of the information charging the underlying
2 offense.

3 (2) If the sentencing enhancement under section 12a or 12b of
4 this chapter is based on the existence of a prior conviction, the
5 notice of intent to seek an enhanced sentence filed under
6 subsection (1) must list the prior conviction or convictions that
7 will or may be relied on for purposes of sentence enhancement. The
8 notice must be filed with the court and served on the defendant or
9 the defendant's attorney within the time provided in subsection
10 (1). The notice may be personally served on the defendant or the
11 defendant's attorney at the arraignment on the information charging
12 the underlying offense, or may be served in the manner provided by
13 law or court rule for service of written pleadings. The prosecuting
14 attorney shall file a written proof of service with the clerk of
15 the court.

16 (3) The prosecuting attorney may file notice of intent to seek
17 an enhanced sentence after the defendant has been convicted of the
18 underlying offense or a lesser offense, on the defendant's plea of
19 guilty or nolo contendere if the defendant pleads guilty or nolo
20 contendere at the arraignment on the information charging the
21 underlying offense, or within the time allowed for filing of the
22 notice under subsection (1).

23 (4) If the sentencing enhancement under section 12a or 12b of
24 this chapter is based on the existence of a prior conviction, a
25 defendant may challenge the accuracy or constitutional validity of
26 1 or more of the prior convictions listed in the notice under
27 subsection (1) by filing a written motion with the court and by
28 serving a copy of the motion upon the prosecuting attorney in
29 accordance with rules of the supreme court.

1 (5) The existence of the defendant's prior conviction or
2 convictions must be determined by the court, without a jury, at
3 sentencing, or at a separate hearing scheduled for that purpose
4 before sentencing. The existence of a prior conviction may be
5 established by any evidence that is relevant for that purpose,
6 including, but not limited to, 1 or more of the following:

7 (a) A copy of a judgment of conviction.

8 (b) A transcript of a prior trial or a plea-taking or
9 sentencing proceeding.

10 (c) A copy of a court register of actions.

11 (d) Information contained in a presentence report.

12 (e) A statement of the defendant.

13 (6) The court shall resolve any challenges to the accuracy or
14 constitutional validity of a prior conviction or convictions that
15 have been raised in a motion filed under subsection (4) at
16 sentencing or at a separate hearing scheduled for that purpose
17 before sentencing. The defendant, or the defendant's attorney, must
18 be given an opportunity to deny, explain, or refute any evidence or
19 information pertaining to the defendant's prior conviction or
20 convictions before sentence is imposed, and must be permitted to
21 present relevant evidence for that purpose. The defendant bears the
22 burden of establishing a prima facie showing that an alleged prior
23 conviction is inaccurate or constitutionally invalid. If the
24 defendant establishes a prima facie showing that information or
25 evidence concerning an alleged prior conviction is inaccurate, the
26 prosecuting attorney bears the burden of proving, by a
27 preponderance of the evidence, that the information or evidence is
28 accurate. If the defendant establishes a prima facie showing that
29 an alleged prior conviction is constitutionally invalid, the

1 prosecuting attorney bears the burden of proving, by a
2 preponderance of the evidence, that the prior conviction is
3 constitutionally valid.