

A state statute provides that the crime of assault is generally punishable by a maximum of five years in prison. It further provides that the maximum punishment increases to 10 years in prison if the defendant possessed a deadly weapon during the assault. The statute designates the deadly weapon element as a sentencing factor.

A defendant charged with assault has pleaded not guilty and has requested a jury trial. The prosecutor has announced that she will be seeking a 10-year sentence based on the defendant's alleged possession of a deadly weapon.

What finding regarding the defendant's possession of a deadly weapon is necessary for the court to impose a 10-year sentence?

- A. A judicial finding by a preponderance of the evidence.
- B. A jury finding by a preponderance of the evidence.
- C. A judicial finding beyond a reasonable doubt.
- D. A jury finding beyond a reasonable doubt.

Explanation:

Due process requires the **prosecution to prove** every element of a criminal offense **beyond a reasonable doubt**. This includes **sentencing factors** (other than a previous conviction) that, if proven, would increase the statutorily imposed sentencing range. And when a defendant's Sixth Amendment right to an impartial jury has been invoked, a **jury must determine** whether the prosecution has met that burden. Therefore, these sentencing factors can only be imposed if the jury finds that the prosecution has proven them beyond a reasonable doubt.

Here, the defendant was charged with assault, which generally carries a five-year maximum sentence. But the prosecutor announced that she will seek a 10-year sentence based on the defendant's alleged possession of a deadly weapon. Since this sentence would heighten the statute's maximum sentencing range, it can only be imposed if a jury finds beyond a reasonable doubt that the defendant possessed a deadly weapon (**Choices A, B & C**).

Educational objective:

A sentencing factor is considered an element of a criminal offense when it would increase the statutorily imposed sentencing range (if proven). Therefore, when the Sixth Amendment right to a jury trial has been invoked, the factor can only be imposed if a jury finds that the prosecution has proven it beyond a reasonable doubt.

References

U.S. Const. amend. VI (right to jury trial).

Apprendi v. New Jersey, 530 U.S. 466, 490 (2000) (explaining that a jury must decide facts that would increase the sentencing range).

U.S. Const. amend. XIV § 1 (due process clause).

In re Winship, 397 U.S. 358, 364 (1970) (holding that the prosecution must prove every element of a crime beyond a reasonable doubt).

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Increasing statutory sentencing range

Assault

- Attempted battery *or*
- Intentionally created reasonable apprehension of imminent bodily harm

Statutory range: 0 to 5 years
(*judicial* sentencing allowed)



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Sentencing factor

- Possession of deadly weapon

Increased range: 5 to 10 years
(*jury* sentencing required)

