



Federal Criminal Laws Applicable to Rioting, Property Destruction, and Related Conduct

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In the days after George Floyd [was pronounced dead](#) following his [arrest](#) by Minneapolis law enforcement officers, widespread demonstrations and protests occurred in [dozens](#) of American cities. News accounts have described the [majority](#) of that activity [to have](#) been [peaceful](#), and such activity is beyond the scope of this Sidebar. However, some cities also experienced rioting, property destruction, and related activity. For example, news reports have documented incidents of individuals [throwing fireworks](#) and other [objects](#) at police officers, [vandalizing property](#), and setting [fires](#). There have also been reports of [looting](#). In several instances, [shootings](#), including shootings involving police officers, have occurred. In [Washington, DC](#), some of the damage extended to [federal property](#), such as the [Lincoln Memorial and the World War Two Memorial](#). In the aftermath of Floyd's death, on May 30, 2020, Attorney General William Barr [stated](#) that the Department of Justice (DOJ) would prosecute those who violate federal laws applicable to rioting. DOJ has already [brought](#) a [variety](#) of [charges](#) for such [conduct](#) that [occurred](#) following Floyd's death. Although [state criminal laws](#) likely govern much of the [rioting](#) and related activity described above, given the interest expressed by some [Members](#) in the incidents surrounding and following the death of George Floyd and Congress's [ability](#) to legislate in this area, this Legal Sidebar examines some of the federal criminal statutes that may be relevant to rioting, property destruction, and related conduct. Specifically, this sidebar discusses, in order: (1) The Anti-Riot Act, (2) the "civil disorder" statute, (3) arson and explosives statutes, and (4) statutes proscribing certain conduct with respect to federal property. This Sidebar does not address issues surrounding law enforcement reform, which is a topic [discussed](#) in [separate](#) CRS products.

The Anti-Riot Act

Some of the destruction and violence following Floyd's death could violate the federal [anti-riot act](#). It imposes fines and up to five years of imprisonment for traveling in, or using a facility of, interstate commerce with [intent](#) to do one of four activities: (1) incite a riot, (2) organize, promote, encourage, or participate in, or carry on a riot, (3) commit any act of violence in furtherance of a riot, or (4) aid or abet any person in such activities. The statute [defines](#) riots as "a public disturbance involving" violent acts, or certain threats of violence, by at least one individual who is "part of an assemblage of three or more persons," where such acts or threats result in, or "constitute a clear and present danger of," property damage or injury to another. The statute [defines](#) inciting, organizing, promoting, encouraging,

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participating in, or carrying on a riot to mean “urging or instigating other persons to riot.” That definition specifically excludes oral or written expression that does not advocate violence.

Although a potentially **broad** range of conduct could violate the anti-riot act, several limitations curtail its applicability. First, as noted, the law does **not** govern conduct lacking an interstate commerce nexus. Second, the **statute** requires that while traveling in, or using a facility of, interstate commerce, the suspect engage in an overt act—an **outward manifestation** of intent to commit a crime. In practice, those overt acts appear to **overlap** with the four prohibited activities listed above. Overt acts can include, for **example**, committing a violent act in furtherance of a riot. Third, the statute applies only to intentional conduct, and **courts** have construed the anti-riot act to “require[] the government to prove a defendant’s intent [to engage in a prohibited purpose] at two points in time:” (1) “when the defendant [travels in or] uses a facility of interstate commerce with the intent to incite a riot,” and (2) “when the defendant commits an overt act . . .” Fourth, some federal **courts** have imposed causality requirements between the defendant’s conduct and the riot, such as one **court** that requires the defendant’s conduct to be “sufficiently closely related as a propelling cause of a riot,” and not a mere attenuated link. Finally, there may be constitutional **limitations** on the application of the anti-riot act.

DOJ has identified the anti-riot act as a relevant criminal statute applicable to current events, as it **announced** its intention to prosecute those who travel in interstate commerce for the purpose of rioting. DOJ has filed at least one **criminal complaint** under the anti-riot act against a defendant who traveled interstate to participate in the violent activities following Floyd’s death. That **complaint** alleges that the defendant traveled to violent activities in Chicago and Minneapolis, where he **looted**, set **fire** to a business, and **distributed** explosives to other individuals and encouraged their use against police officers. DOJ also brought anti-riot act **charges** against another individual for conduct following Floyd’s death—alleging not that he traveled interstate, but rather that he used the internet (a facility of interstate commerce) to organize, promote, participate in, and carry on a riot. Specifically, according to the allegations, the defendant repeatedly encouraged looting and arson at various locations in the Peoria area through a series of **Facebook Live** videos. Although some of the conduct following Floyd’s death may lack such an interstate commerce nexus, prosecution in those instances may be **possible** under state and local laws, which the statute does **not** preempt.

Civil Disorder

One federal criminal statute that **DOJ** is relying on to prosecute riot-related conduct following Floyd’s death is a federal **statute** prohibiting certain conduct related to a “civil disorder,” a term of art defined as a “**public** disturbance involving acts of violence by assemblages of three or more persons, which causes an immediate danger of or results in” injury to the property or person of another. Specifically, the civil disorder **statute** imposes fines and a maximum prison term of five years for “**commit[ting]** or attempt[ing] to commit any act to obstruct, impede, or interfere with” a fireman or law enforcement officer “lawfully engaged in the lawful performance of his official duties” during a civil disorder, assuming certain jurisdictional requirements are satisfied.

Although there is limited case law on the statute, courts have identified various limiting principles on its application. For example, the statute has been read to only regulate **violent physical acts and does not concern speech**. In this vein, one federal appellate **court** upheld the civil disorder conviction of a defendant who threw a cherry bomb at a line of police officers responding to a fire at a riot. Several other factors limit the applicability of the civil disorder statute. First, although it is silent on *mens rea*, courts have construed the civil disorder statute to criminalize only **intentional** conduct. Second, like the anti-riot act discussed above, the civil disorder **statute** has jurisdictional limitations on its reach. Specifically, the statute requires either (1) an interstate commerce nexus, applying to conduct that “obstructs, delays, or adversely affects” interstate commerce or the movement of an article in interstate commerce, or (2) the obstruction of “the conduct or performance of any federally protected function . . .” A “**federally**

protected function” includes any function or operation by any federal department, agency, instrumentality, officer, or employee pursuant to federal law. Finally, although the statute provides a broad definition of **“law enforcement officer,”** which may at times include federal, state, and military personnel, the prosecution bears the burden of establishing that law enforcement was acting lawfully during the alleged statutory violation. At least one **court** has acquitted defendants of civil disorder charges for interfering with officers where the prosecution failed to establish that those officers were acting within their lawful authority.

DOJ has filed a number of criminal complaints under the civil disorder statute for conduct related to the riots following Floyd’s death. One **complaint** alleges that the defendant was in a group that threw explosives at police officers who were responding to riots in Minneapolis. A similar, unrelated **complaint** alleges that a defendant violated the statute when he “attempted to obstruct or interfere with law enforcement officers engaged in responding to the violent demonstration in Worcester[, Massachusetts] on June 1, 2020” Although the civil disorder statute would not apply where there is no adverse effect on interstate commerce or impairment of a federally protected function, prosecution in such instances may still be possible under **state** or local laws, which the civil disorder statute does not **preempt**.

Arson and Explosives Statutes

Reports of **fires** set in some buildings and attempts to **distribute** incendiary devices may implicate several federal laws governing the possession, distribution, and use of explosives, among other things. These statutes broadly can be divided into two categories: (1) 18 U.S.C. §§ 842 and 844, which regulate **“explosive materials”** in detail and prohibit the use of explosives or fire to damage or destroy property in some circumstances; and (2) 26 USC § 5861 and 18 U.S.C. § 922, which restrict the receipt, transport, and possession of “destructive devices.”

18 U.S.C. §§ 842 and 844: Arson and “Explosive Materials”

18 U.S.C. §§ 842 and 844 contain a lengthy set of **provisions** that stringently regulate “explosive materials” and prohibit certain conduct involving explosives. The term “explosive materials” is **defined** to include “any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion.” A comprehensive, though not exclusive, **list** of explosive materials is published annually in the Federal Register.

For items meeting the statutory definition of “explosive materials,” 18 U.S.C. § 842(a)(3) **prohibits** their knowing receipt or transport by any person who does not have a federal license or permit. Section 842(i) also separately **prohibits** the knowing transport, receipt, or possession of an explosive in or affecting interstate or foreign commerce by any person who falls into at least one of seven categories:

- indicted or convicted felons,
- fugitives from justice,
- addicts and unlawful users of controlled substances,
- those with certain mental health statuses,
- certain aliens,
- those dishonorably discharged from the armed forces, and
- U.S. citizens who have renounced their citizenship.

“Knowing” receipt, transport, or possession for purposes of Section 842 **requires** that a person know that the objects have “the characteristics that [bring] them within the statutory definition of an explosive,” e.g., that they are “primarily designed to function by explosion.” Following a Supreme Court **decision** interpreting a **“nearly identical”** statute governing firearms, Section 842(i) also likely requires knowledge

that a person falls into at least one of the prohibiting categories listed above. Violations of Sections 842(a)(3) and 842(i) are **punishable** by fines and up to ten years in prison.

Separate from the provisions of Section 842, 18 U.S.C. § 844 **prohibits** “maliciously” *using* means of “fire or an explosive” to damage or destroy (or attempt to damage or destroy) a building, vehicle, or other real or personal property that is either (1) owned, possessed, or leased by the federal government or any institution or organization receiving federal financial assistance; or (2) used in interstate or foreign commerce or an activity affecting interstate or foreign commerce. Transporting or receiving an explosive in interstate or foreign commerce “with the knowledge or intent that it will be used” for the same purpose is **prohibited**, as well. The term “explosive” is defined separately for purposes of these provisions of Section 844 as including (among other things) incendiary **devices** commonly **known** as “Molotov cocktails” and **other** compounds, mixtures, and devices containing combinations of ingredients that may cause explosion when ignited. To “maliciously” engage in the proscribed conduct, one must **act** intentionally or “with willful disregard of the likelihood that damage or injury [will] result from his or her acts.” Additionally, given the limitation that non-federal property protected by the statute must be used in commerce “or an activity affecting” commerce, the provision reaches **only** property that is in “active employment for commercial purposes” and not, for example, owner-occupied private residences. Violations of the arson provisions of Section 844 involving actual use of fire or an explosive (rather than mere receipt or transport) are **subject** to a five-year mandatory minimum sentence of imprisonment, which is increased to seven years if personal injury results. Statutory maximum sentences also **depend** on the effects of the proscribed conduct—if death results, a person may be subject to the death penalty or to life imprisonment.

Some of the property destruction and related conduct following the death of George Floyd could be subject to Sections 842 and 844. For instance, handing out or throwing explosive devices, as has been **reported** in **some locations**, could run afoul of the provisions of Section 842 that restrict the transport, receipt, and possession of explosive materials if those involved lacked a permit or license or fell into one of the statute’s prohibiting categories (e.g., convicted felons). Application of Section 842 would also likely depend on the precise nature of the devices and whether they would meet the statutory definition of “explosive materials.” Additionally, the use of fire and incendiary devices in an attempt to damage property like police vehicles and commercial buildings may violate the arson provisions of Section 844. It appears that multiple people have **already** been **charged** under those provisions in recent days.

26 U.S.C. § 5861 and 18 U.S.C. § 922(g): “Destructive Devices”

The National Firearms Act (NFA), codified at Chapter 53 of Title 26 of the U.S. Code, generally **limits** the availability of certain kinds of weapons through a detailed taxation and registration system. Among other things, 26 U.S.C. § 5861 makes it **unlawful** to receive, possess, or transfer a covered weapon without paying applicable taxes and ensuring the weapon is appropriately registered with the Bureau of Alcohol, Tobacco, Firearms and Explosives. One category of weapon subject to the NFA is a “destructive device,” which is **defined** to include “any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device.” To violate Section 5861, one **must** “know the characteristics of a [weapon] that bring it within the NFA’s ambit,” but one need not know the requirements that make receipt, possession, or transfer unlawful (e.g., that a covered weapon is unregistered). Violators of the NFA are **subject** to fines and imprisonment of up to ten years.

A separate set of provisions collectively known as the Gun Control Act (GCA), primarily codified at Chapter 44 of Title 18 of the U.S. Code, impose further **restrictions** on the possession of most kinds of firearms, which are defined to include destructive devices. Among other things, 18 U.S.C. § 922(g) **establishes** categories of persons who, because of risk-related characteristics, may not possess such devices in or affecting commerce. The categories are similar to those described above under 18 U.S.C.

§ 842 and [include](#) convicted felons, fugitives from justice, and unlawful users or addicts of controlled substances. To be convicted under the GCA, a person must knowingly possess the device [and](#) must know his or her prohibited status as well (e.g., that he or she is a convicted felon). Violations of many of the prohibitions contained in the GCA and supplementing statutes are [punishable](#) as felonies, subjecting violators to criminal fines and statutory imprisonment ranges of varying lengths. Increased penalties are also [tied](#) to transporting or receiving destructive devices in interstate or foreign commerce with intent to use them (or with knowledge they will be used) to commit separate felony crimes, as well as using, carrying, or possessing such devices in connection with “any crime of violence or drug trafficking crime.”

Recent instances of individuals placing or transporting explosives near or during protests appear to have led to federal charges under the NFA and GCA, including in [one](#) case where a man allegedly left a backpack full of explosive devices in downtown Pittsburgh and another where a man who had previously been convicted of a felony allegedly [carried](#) a Molotov cocktail during a protest in Jacksonville.

Conduct Relating to Government Property

Some of the rioting and related conduct following the death of George Floyd involved federal government property, to which several criminal statutes pertain. For example, some [federal](#) government property was vandalized in the days following Floyd’s death, which could implicate a [statute](#) prohibiting willful injury of federal property. Ordinarily, violations of that statute are subject to fines and a maximum prison term of one year. However, if the damage to federal property [exceeds](#) \$1,000, the statute authorizes increased fines and up to ten years of imprisonment. Other statutes could apply to damage to specific subsets of federal government property. For example, one [statute](#) imposes fines and up to ten years of imprisonment for “willfully injur[ing] or destroy[ing], or attempt[ing] to injure or destroy, any structure, plaque, statue, or other monument . . . [on federal property] commemorating the service of any person or persons in the” United States armed forces. Some federal property in Washington, DC, may be governed by other statutes, such as [one](#) that applies specifically to conduct occurring at the United States [Capitol Grounds](#) or [Capitol Buildings](#). It imposes fines and a maximum prison term of six months for (1) obstruction or occupation of roads that hinders their “proper use;” (2) damaging “any statue, seat, wall, fountain, or other erection or architectural feature, or any tree, shrub, plant, or turf,” (3) obstructing or impeding passage, or (4) committing acts of physical violence. It is unclear whether anyone has yet been charged under these statutes for conduct following Floyd’s death, but investigations into at least some activity implicating federal property are [reportedly ongoing](#).

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