Appendix A -- Chronology of Amendments to Career Offender Guidelines, Commentary and Policy Statements[1]

Date/ Amend. No.	Language	Reason
11/1/87 Original Guideline	**Statutory Authority**: "28 U.S.C. § 994(h) mandates that the Commission assure certain 'career' offenders, as defined in the statute, receive a sentence of imprisonment 'at or near the maximum term authorized.' Section 4B1.1 implements this mandate. The legislative history of this provision suggests that the phrase 'maximum term authorized' should be construed as the maximum term authorized by statute. See S. Rep. 98-225, 98th Cong., 1st Sess. 175 (1983), 128 Cong. Rec. 12792, 97th Cong., 2d Sess. (1982) ('Career Criminals' amendment No. 13 by Senator Kennedy), 12796 (explanation of amendment), and 12798 (remarks by Senator Kennedy). The guideline levels for career offenders were established by using the statutory maximum for the offense of conviction to determine the class of felony provided in 18 U.S.C. § 3559. Then the maximum authorized sentence of imprisonment for each class of felony was determined as provided by 18 U.S.C. § 3581. A guideline range for each class of felony was then chosen so that the maximum of the guideline range was at or near the maximum provided in 18 U.S.C. § 3581."	S. Rep. 98-225, 98th Cong., 1st Sess. 175 (1983), 128 Cong. Rec. 12792, 97th Cong., 2d Sess. (1982) ("Career Criminals" amendment No. 13 by Senator Kennedy), 12796 (explanation of amendment), and 12798 (remarks by Senator Kennedy)

[1] This chart does not include every amendment to §§ 4B1.1 and 4B1.2, or every part of the amendments that are included. For a complete list of amendments, see the Historical Note at the end of each guideline. For the complete amendment language, see USSG, Appendix C.

	USSG 4B1.1, comment. (backg'd) (1987).	
	Defined "felony conviction" for purposes of "**prior felony conviction**" as a "prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed." USSG 4B1.2, comment. (n.3) (Nov. 1, 1987).	No reason for including state misdemeanors.
	Defined "**controlled substance offense**" to "mean[] an offense identified in" 21 U.S.C. §§ 841, 952(a), 955, 955a (which was later codified as 46 U.S.C. § 70503) and 959, but also §§ 845b (employing persons under 18, later transferred to § 861), 856 (maintaining drug involved premises), "and similar offenses." USSG 4B1.2(2) (Nov. 1, 1987). "'Controlled substance offense' means the federal offenses identified in the statutes referenced in § 4B1.2, or substantially equivalent state offenses. These offenses include manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute or dispense, a controlled substance (or a counterfeit substance). This definition also includes aiding and abetting, conspiring or attempting to commit such offenses, and other offenses that are substantially equivalent to the offenses listed." USSG 4B1.2, comment. (n.2) (Nov. 1, 1987).	No reason for expanding on statutory list.

	"The term '**crime of violence**' . . . is defined under 18 USC § 16." USSG 4B1.2(1) (Nov. 1, 1987). "'Crime of violence' is defined in 18 USC § 16 to mean an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that by its nature involves a substantial risk that physical force against the person or property of another may be used in committing the offense. The Commission interprets this as follows: murder, manslaughter, kidnapping, aggravated assault, extortionate extension of credit, forcible sex offenses, arson, or robbery are covered by this provision. Other offenses are covered only if the conduct for which the defendant was specifically convicted meets the above definition. For example, conviction for an escape accomplished by force or threat of injury would be covered; conviction for an escape by stealth would not be covered. Conviction for burglary of a dwelling would be covered; conviction for burglary of other structures would not be covered." USSG 4B1.2, comment. (n.1) (Nov. 1, 1987).	
1/15/88 Amend. 48	**Statutory Authority**: Deleted the last paragraph of the background commentary, which had stated as follows: "The guideline levels for career offenders were established by using the statutory maximum for the offense of conviction to determine the class of	"The purpose of this amendment is to correct the guideline so that the table relating offense statutory maxima to offense levels is consistent with the current authorized statutory maximum terms."

	felony provided in 18 U.S.C. § 3559. Then the maximum authorized sentence of imprisonment for each class of felony was determined as provided by 18 U.S.C. § 3581. A guideline range for each class of felony was then chosen so that the maximum of the guideline range was at or near the maximum provided in 18 U.S.C. § 3581."	
1/15/88 Amend. 49	Commentary: -Broadened "**controlled substance offense**" by replacing the phrase in the first sentence, "the federal offenses identified in the statutes referenced in § 4B1.2, or substantially equivalent state offenses," with "any federal or state offense that is substantially similar to any of those listed in" the guideline. -Added importing and possessing with intent to import. USSG 4B1.2, comment. (n.2) (Jan. 15, 1988).	"to correct a clerical error and to clarify the guideline"
11/1/89 Amend. 268	Broadened and narrowed "**controlled substance offense**" by deleting citations to identified federal offenses (including 21 U.S.C. §§ 856, 861), and defining "controlled substance offense" as "an offense under a federal or state law prohibiting the manufacture, import, export, or distribution of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, or distribute." USSG § 4B1.2(2) (Nov. 1, 1989). Commentary: Deleted previous commentary, and added: "The	"to clarify the definition[] of . . . controlled substance offense."

	terms 'crime of violence' and 'controlled substance offense' include the offenses of aiding and abetting, conspiring and attempting to commit such offenses." USSG § 4B1.2, comment. (n.1) (Nov. 1, 1989).	
	Deleted § 16 as definition of "**crime of violence**" and adopted definition of "violent felony" in 18 USC § 924(e)(2)(B), except that the guideline lists "burglary of a dwelling" while § 924(e)(2)(B) lists "burglary," as follows: The term "crime of violence" means any offense under federal or state law punishable by imprisonment for a term exceeding one year that -- (i) has as an element the use, attempted use, or threatened use of physical force against the person of another, or (ii) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another. USSG 4B1.2(1) (Nov. 1, 1989). Commentary: -removed the phrase "or otherwise" between enumerated offenses and conduct posing a risk of injury, instead including any "conduct set forth in the count of which the defendant was convicted . . . by its nature, presented a serious potential risk of physical injury to another." -added extortion, use of explosives, and aiding	"to clarify the definition[] of crime of violence . . . used in this guideline. The definition of crime of violence is derived from 18 U.S.C. § 924(e)."

	and abetting, conspiring and attempting to commit a crime of violence, to the offenses previously listed in the commentary. -deleted language excluding escape by stealth, including escape by force, excluding burglary of a structure other than a dwelling, including burglary of a dwelling. USSG 4B1.2, comment. (nn.1-2) (Nov. 1, 1989).	
11/1/91 Amend. 433	Commentary: Added to definition of "**prior felony conviction**": "A conviction for an offense committed at age eighteen or older is an adult conviction. A conviction for an offense committed prior to age eighteen is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (e.g., a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult)." USSG 4B1.2, comment. (n.3) (Nov. 1, 1991).	"clarifies the definition of a prior adult conviction"
	Restored "dispensing" to list of "**controlled substance offenses**." USSG 4B1.2(2) (Nov. 1, 1991).	"makes the definitions in §4B1.2(2) more comprehensive"
	Commentary: -Added to the definition of "**crime of violence**" that the conduct must be "expressly charged," and "the conduct of which the defendant was convicted is the focus of the inquiry." -Excluded unlawful possession of a firearm by a felon, noting that if the instant offense is felon in	-"clarifies that the application of §4B1.2 is determined by the offense of conviction (i.e., the conduct charged in the count of which the defendant was convicted)" -"clarifies that the offense of unlawful possession of a weapon is not a crime

	possession, the sentence will be enhanced for one or more prior felony convictions for a crime of violence or controlled substance offense under USSG 2K2.1, or the defendant may be sentenced under 18 U.S.C. § 924(e) and USSG 4B1.4 (Armed Career Criminal). -Expanded "use of explosives" to include "any explosive material or destructive device." USSG 4B1.2, comment. (n.2) (Nov. 1, 1991).	of violence for the purposes of this section" -No reason given.
11/1/94 Amend. 506	Commentary: Changed definition of "**Offense Statutory Maximum**" from "the maximum term of imprisonment authorized for the offense of conviction" to "the maximum term of imprisonment authorized for the offense of conviction . . . not including any increase in that maximum term under a sentencing enhancement provision that applies because of the defendant's prior criminal record (such sentencing enhancement provisions are contained, for example, in 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), (b)(1)(C), and (b)(1)(D))." USSG 4B1.1, comment. (n.2) (Nov. 1, 1994).	"This amendment defines the term 'offense statutory maximum' in §4B1.1 to mean the statutory maximum prior to any enhancement based on prior criminal record (i.e., an enhancement of the statutory maximum sentence that itself was based upon the defendant's prior criminal record will not be used in determining the alternative offense level under this guideline). This rule avoids unwarranted double counting as well as unwarranted disparity associated with variations in the exercise of prosecutorial discretion in seeking enhanced penalties based on prior convictions. It is noted that when the instruction to the Commission that underlies §4B1.1 (28 U.S.C. § 994(h)) was enacted by the Congress in 1984, the enhanced maximum sentences provided for recidivist drug offenders (e.g., under 21 U.S.C. § 841) did not exist." **[This last sentence does not appear to be correct. *See* 21 U.S.C. § 841 (1970-1984).]**
11/1/95 Amend. 528	Commentary re **Statutory Authority Revised**: - Deleted: "28 U.S.C. § 994(h) mandates that the Commission assure that certain 'career' offenders, as defined in the statute, receive a sentence of imprisonment 'at or near the maximum term authorized.' Section 4B1.1 implements this mandate. The legislative history of this provision suggests that the phrase	"This amendment repromulgates Application Note 1 of the Commentary to §4B1.2 (Definition of Terms Used in Section 4B1.1) and inserts additional background commentary in §4B1.1 (Career Offender) explaining the Commission's rationale and authority for its implementation of this guideline. The amendment responds to a decision by the United States Court of Appeals for the District of Columbia Circuit in United States v. Price, 990 F.2d 1367 (D.C. Cir. 1993. In Price, the court invalidated application of the career offender guideline to a defendant convicted of a drug conspiracy because 28 U.S.C. § 994(h), which the Commission cites as the mandating

	'maximum term authorized' should be construed as the maximum term authorized by statute. See S. Rep. 98-225, 98th Cong., 1st Sess. 175 (1983), 128 Cong. Rec. 26, 511-12 (1982) (text of 'Career Criminals' amendment by Senator Kennedy), 26, 515 (brief summary of amendment), 26, 517- 18 (statement of Senator Kennedy)." -Inserted in lieu thereof: "Section 994(h) of Title 28, United States Code, mandates that the Commission assure that certain 'career' offenders receive a sentence of imprisonment 'at or near the maximum term authorized.' Section 4B1.1 implements this directive, with the definition of a career offender tracking in large part the criteria set forth in 28 U.S.C. § 994(h). However, in accord with its general guideline promulgation authority under 28 U.S.C. § 994(a)-(f), and its amendment authority under 28 U.S.C. § 994(o) and (p), the Commission has modified this definition in several respects to focus more precisely on the class of recidivist offenders for whom a lengthy term of imprisonment is appropriate and to avoid 'unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct ....' 28 U.S.C. § 994(b)(1)(B). The Commission's refinement of this definition over time is consistent with Congress's choice of a directive to the Commission rather than a mandatory minimum sentencing statute ('The [Senate Judiciary] Committee believes that such a directive to the Commission will be more	authority for the career offender guideline, does not expressly refer to inchoate offenses. The court indicated that it did not foreclose Commission authority to include conspiracy offenses under the career offender guideline by drawing upon its broader guideline promulgation authority in 28 U.S.C. § 994(a). See also United States v. Mendoza-Figueroa, 28 F.3d 766 (8th Cir. 1994), vacated (Sept. 2, 1994); United States v. Bellazerius, 24 F.3d 698 (5th Cir.), cert. denied, 115 S. Ct. 375 (1994). Other circuits have rejected the Price analysis and upheld the Commission's definition of "controlled substance offense." For example, the Ninth Circuit considered the legislative history to 994(h) and determined that the Senate Report clearly indicated that 994(h) was not the sole enabling statute for the career offender guidelines. United States v. Heim, 15 F.3d 830 (9th Cir.), cert. denied, 115 S. Ct. 55 (1994). See also United States v. Hightower, 25 F.3d 182 (3d Cir.), cert. denied, 115 S. Ct. 370 (1994); United States v. Damerville, 27 F.3d 254 (7th Cir.), cert. denied, 115 S. Ct. 445 (1994); United States v. Allen, 24 F.3d 1180 (10th Cir.), cert. denied, 115 S. Ct. 493 (1994); United States v. Baker, 16 F.3d 854 (8th Cir. 1994); United States v. Linnear, 40 F.3d 215 (7th Cir. 1994); United States v. Kennedy, 32 F.3d 876 (4th Cir. 1994), cert. denied, 115 S. Ct. 939 (1995); United States v. Piper, 35 F.3d 611 (1st Cir. 1994), cert. denied, 115 S. Ct. 1118 (1995)."

	effective; the guidelines development process can assure consistent and rational implementation for the Committee's view that substantial prison terms should be imposed on repeat violent offenders and repeat drug traffickers.' S. Rep. No. 225, 98th Cong., 1st Sess. 175 (1983)). The legislative history of this provision suggests that the phrase 'maximum term authorized' should be construed as the maximum term authorized by statute. See S. Rep. No. 225, 98th Cong., 1st Sess. 175 (1983); 128 Cong. Rec. 26,511-12 (1982) (text of 'Career Criminals' amendment by Senator Kennedy); id. at 26,515 (brief summary of amendment); id. at 26,517-18 (statement of Senator Kennedy)." USSG 4B1.1, comment. (backg'd) (Nov. 1, 1995)	
11/1/97 Amend. 567	Commentary re "**offense statutory maximum**": - Changed definition of "offense statutory maximum" to the "maximum term of imprisonment authorized for the offense of conviction . . . including any increase in that maximum term under a sentencing enhancement provision that applies because of the defendant's prior criminal record (such sentencing enhancement provisions are contained, for example, in 21 U.S.C. § 841(b)(1)(A), (B), (C), and (D)). For example, in a case in which the statutory maximum term of imprisonment under 21 U.S.C. § 841(b)(1)(C) is increased from twenty years to thirty years because the defendant has one or more qualifying prior drug convictions, the "Offense Statutory Maximum" for that defendant for the purposes of this guideline is thirty years	"This amendment responds to United States v. LaBonte, 520 U.S. 751. In LaBonte, the Supreme Court held that the way in which the Commission defined 'maximum term authorized', for purposes of fulfilling the requirement under 28 U.S.C. § 994(h) to specify sentences for certain categories of career offenders at or near the maximum term authorized for those offenders, is inconsistent with § 994(h)'s plain and unambiguous language and is therefore invalid. The Commission defined 'maximum term authorized' to mean the maximum term authorized for the offense of conviction not including any sentencing enhancement provisions that apply because of the defendant's prior criminal record. The Supreme Court held that under § 994's plain and unambiguous language, 'maximum term authorized' must be read to include all applicable statutory sentencing enhancements. The proposed amendment makes a straightforward change to the commentary to §4B1.1, the career offender guideline, to reflect the LaBonte decision. Specifically, the definition of 'maximum term authorized' is proposed to be changed to reflect that the 'maximum term authorized' includes all sentencing enhancements that apply because of the

	and not twenty years. If more than one count of conviction is a crime of violence or a controlled substance offense, use the maximum authorized term of imprisonment for the count that has the greatest offense statutory maximum." USSG 4B1.1, comment. (n.2) (Nov. 1, 1997). -Deleted from background commentary: "The legislative history of this provision suggests that the phrase 'maximum term authorized' should be construed as the maximum term authorized by statute. See S. Rep. No. 225, 98th Cong., 1st Sess. 175 (1983); 128 Cong. Rec. 26,511-12 (1982) (text of 'Career Criminals' amendment by Senator Kennedy); id. at 26,515 (brief summary of amendment); id. at 26,517-18 (statement of Senator Kennedy)."	defendant's prior criminal record."
11/1/97 Amend. 568	Commentary added five "**controlled substance offense**" or "**crime of violence**" predicates: -Unlawfully possessing a listed chemical with intent to manufacture a controlled substance under 21 U.S.C. § 841(d)(1) -Unlawfully possessing a prohibited flask or equipment with intent to manufacture a controlled substance under 21 U.S.C. § 843(a)(6) -Maintaining any place for the purpose of facilitating a drug offense under 21 U.S.C. § 856 if the offense of conviction established that the offense facilitated was a "controlled substance offense." -Using a communications facility in committing, causing, or facilitating a drug offense under 21	The first two were added to resolve a circuit split. The Tenth Circuit had held in *United States v. Wagner*, 994 F.2d 1467, 1475 (10th Cir. 1993) that 21 U.S.C. § 841(d)(1) was not a controlled substance offense because it was not the manufacture or possession or attempt to manufacture a controlled substance, while the Fifth Circuit held in *United States v. Calverley*, 11 F.3d 505 (5th Cir. 1993) that it was a controlled substance offense. It was the Commission's "view that that there is such a close connection between possession of a listed chemical or prohibited flask or equipment with intent to manufacture a controlled substance and actually manufacturing a controlled substance that the former offenses are fairly considered as controlled substance trafficking offenses." The other three were added, with the proviso that the offense of conviction established that the underlying offense was a controlled substance offense or crime of violence, to "clarify" that these offenses were covered. The Reason for Amendment cited *United States v. Baker*, 16 F.3d 854 (8th Cir. 1994), where the Eighth Circuit held that 21 U.S.C. § 856 was not a

	U.S.C. § 843(b) if the offense of conviction established that the offense committed, caused, or facilitated was a "controlled substance offense." -Possessing a firearm during and in relation to a crime of violence or drug offense (18 U.S.C. § 924(c)) is a "crime of violence" or "controlled substance offense" if the offense of conviction established that the underlying offense (the offense during and in relation to which the firearm was carried or possessed) was a "crime of violence" or "controlled substance offense." "Note that if the defendant also was convicted of the underlying offense, the two convictions will be treated as related cases under §4A1.2." USSG 4B1.2, comment. (n.1) (Nov. 1, 1997).	controlled substance offense, first because it was deleted by Amendment 268, and second because it could be committed by maintaining a place for the purpose of facilitating mere use, and *United States v. Vea-Gonzales*, 999 F.2d 1326 (9th Cir. 1993), where the Ninth Circuit held that 21 U.S.C. § 843(b) was a controlled substance offense where the information specifically charged that distribution was being facilitated.
11/1/00 Amend. 641	Commentary to §2K2.4 amended to say: "Do not apply Chapter Three (Adjustments) and Chapter Four (Criminal History and Criminal Livelihood) to any offense sentenced under this guideline. Such offenses are excluded from application of these chapters because the guideline sentence for each offense is determined only by the relevant statute." Commentary to §4B1.2 amended to say: "A prior conviction for violating **18 U.S.C. § 924(c) or § 929(a)** is a 'prior felony conviction' for purposes of applying §4B1.1 (Career Offender) if the prior offense of conviction established that the underlying offense was a '**crime of violence**' or '**controlled substance offense**,'" and to say that the "guideline sentence for a conviction	To "clarify guideline application for offenders convicted under 18 U.S.C. §§ 924(c) and 929(a) who might also qualify as career offenders under the rules and definitions provided in §§4B1.1 (Career Offender) and 4B1.2. . . . This amendment adds a new Application Note 3 to §2K2.4 directing courts not to apply Chapter Three (Adjustments) or Chapter Four (Criminal History and Criminal Livelihood) to any offense sentenced under §2K2.4. This effectively prohibits the use of 18 U.S.C. § 924(c) convictions either to trigger application of the career offender guideline, §4B1.1, or to determine the appropriate offense level under that guideline. Application Note 1 of §4B1.2 also is amended to clarify, however, that prior convictions for violating 18 U.S.C. § 924(c) will continue to qualify as 'prior felony convictions' under the career offender guideline in most circumstances."

	under 18 U.S.C. § 924(c) or § 929(a) is determined only by the statute and is imposed independently of any other sentence. . . . Accordingly, do not apply this guideline if the only offense of conviction is for violating 18 U.S.C. § 924(c) or § 929(a)."	
10/27/03 Amend. 651	Limited **departure** in career offender cases where the guideline "significantly over-represents the seriousness of [the] defendant's criminal history or the likelihood that the defendant will commit further crimes" to one criminal history category. USSG 4A1.3(b)(3)(A), p.s. (Oct. 27, 2003).	PROTECT Act, enacted April 30, 2003, directed Commission to promulgate amendments to substantially reduce the incidence of downward departure within 180 days. (PROTECT Act did not specify that the incidence of downward departure in career offender cases should be reduced.)
11/1/04 Amend. 674	Commentary added "**crime of violence**" predicate of "unlawfully possessing a firearm described in 26 U.S.C. § 5845(a) (e.g., a sawed-off shotgun or sawed-off rifle, silencer, bomb, or machine gun)" as a "crime of violence" and excluded it from the exception for possession of a firearm USSG 4B1.2, comment. (n.1).	"Congress has determined that those firearms described in 26 U.S.C. § 5845(a) are inherently dangerous and when possessed unlawfully, serve only violent purposes. In the National Firearms Act, Pub. L. 90-618, Congress required that these firearms be registered with the National Firearms Registration and Transfer Record. A number of courts have held that possession of certain of these firearms, such as a sawed-off shotgun, is a 'crime of violence' due to the serious potential risk of physical injury to another person. The amendment's categorical rule incorporating 26 U.S.C. § 5845(a) firearms includes short-barreled rifles and shotguns, machine guns, silencers, and destructive devices."