

## Appendix B – §§4B1.1, 4B1.2, 11/1/87

### § 4B1.1. Career Offender

A defendant is a career offender if (1) the defendant was at least eighteen years old at the time of the instant offense, (2) the instant offense is a crime of violence or trafficking in a controlled substance, and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense. If the offense level for a career criminal from the table below is greater than the offense level otherwise applicable, the offense level from the table below shall apply. A career offender's criminal history category in every case shall be Category VI.

Offense statutory maximum	Offense Level
(A) Life	37
(B) 20 years or more	34
(C) 10 years or more, but less than 20 years	26
(D) 5 years or more, but less than 10 years	19
(E) More than 1 year, but less than 5 years	12
(F) 1 year or less	4

Commentary

*Application Note:*

1. "Crime of violence," "controlled substance offense," and "felony conviction" are defined in § 4B1.2.

*Background:* 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 "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.

### § 4B1.2. Definitions

(1) The term "crime of violence" as used in this provision is defined under 18 U.S.C. 16.

(2) The term "controlled substance offense" as used in this provision means an offense identified in 21 U.S.C. 841, 952(a), 955, 955a, 959; 405B and 416 of the Controlled Substance Act as amended in 1986, and similar offenses.

(3) The term "two prior felony convictions" means (1) the defendant committed the instant offense subsequent to sustaining at least two felony convictions for either a crime of violence or a controlled substance offense (i.e., two crimes of violence, two controlled substance offenses, or one crime of violence and one controlled substance offense), and (2) the sentences for at least two of the aforementioned felony convictions are counted separately under the provisions of Part A of this Chapter. The date that a defendant sustained a conviction shall be the date the judgment of conviction was entered.

## Commentary

### *Application Notes:*

1. "Crime of violence" is defined in *18 U.S.C. 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.

2. "Controlled substance offense" means any of 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.

3. "Felony conviction" means 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.

4. The provisions of § 4A1.2(e) (Applicable Time Period), § 4A1.2(h) (Foreign Sentences), and § 4A1.2(j) (Expunged Convictions) are applicable to the counting of convictions under § 4B1.1. Also applicable is the Commentary to § 4A1.2 pertaining to invalid convictions.