



Via Electronic Public Comment Submission Portal

Greg Glod
Director, Center for American Justice Policy
America First Policy Institute

The Honorable Carlton W. Reeves, Chair
United States Sentencing Commission

RE: Comment on Proposed Career Offender Amendment

Dear Judge Reeves and Members of the United States Sentencing Commission:

On behalf of America First Policy Institute (AFPI), I submit this response to the Sentencing Commission's ("Commission") request for comment on its proposed amendments to the Sentencing Guidelines in the Federal Register on February 6, 2026.¹ Specifically, this comment will focus on the changes proposed to the definition and application of crimes of violence for purposes of designating a defendant as a "career offender" under Guideline §4B1.1.²

AFPI appreciates the Commission's dedication to this incredibly important topic and its efforts to address the issues that arise from the categorical approach when applied to the Sentencing Guidelines. AFPI has supported eliminating the categorical approach to identifying who should be considered a career offender under the Sentencing Guidelines and appreciates the Commission's willingness to amend the Guidelines to do so.³ While we are generally aligned with the Commission's approach to doing so, we wish to flag several areas in which the proposal may inadvertently undermine Congress's intent to see violent habitual offenders punished "to a term of imprisonment at or near maximum term authorized..." and provide our recommended path forward.

Crime of Violence for Federal Offenses

The amendment proposes modifying the current definition of a federal crime of violence found in U.S.S.G. §4B1.2(a) by 1) removing the force clause completely, and 2) listing which specific federal offenses are crimes of violence. While this may eliminate some of the issues arising from the current categorical approach, it could also bring unintended consequences that undermine the congressional intent to punish repeat offenders "at or near the maximum term authorized," pursuant to 28 U.S.C. 994(h).

¹ *Notice and request for public comment and hearing*, 91 Fed. Reg. 25, 5556 (Feb. 6, 2026), available at <https://www.govinfo.gov/content/pkg/FR-2026-02-06/pdf/2026-02441.pdf>; see also U.S. Sent'g Comm'n., *Proposed Amendments to the Sentencing Guidelines* (Jan. 30, 2026), available at https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202602_rf-proposed.pdf

² U.S.S.G. §4B1.1.

³ Glod, Greg. (2026). *How to Fix USSC's Sentencing Guidelines for Career Offenders*. America First Policy Institute.



First, Congress is constantly adding and amending criminal statutes that could make this list incomplete or obsolete quite quickly. Additionally, new categories of violent or coercive conduct are emerging constantly, including technology-facilitated offenses. They may not align exactly with the current list (or any attempt at a list), and amending these guidelines or modifying laws via Congress could take a significant amount of time. Second, by limiting offenses to a list and prohibiting judges from deviating from it, the amendment provides no mechanism for judges to appropriately punish truly dangerous or violent behavior based on the facts of the case if that crime is unlisted. Third, by removing the “force clause” without replacing it, it potentially narrows the range of offenses that can be considered a crime of violence. It could thus allow certain dangerous defendants to avoid the career offender designation, based on its absence from the statutory designation rather than on the conduct of the individual in committing that crime. Taken together, these concerns suggest that the proposed amendment risks creating a potentially more rigid and less effective framework for identifying the repeat violent offenders whom Congress intended the career offender guideline to reach.

AFPI recommends maintaining a “force clause,” but clarifying that a judge may go beyond an elements-based evaluation and consider the underlying facts of the case to determine whether the conviction involved the actual, attempted, or threatened use of physical force against the person of another. The Guidelines could limit the types of documents that may be considered for evaluation under *Shepard v. United States*,⁴ but AFPI would prefer an expanded list that includes other reliable documents, such as presentence investigation reports, sentencing transcripts, or documents that show factual findings by a judge or jury, regardless of whether the defendant agreed to them (as is currently the restriction under *Shepard*). This could establish a presumption of a crime of violence that a defendant could overcome.

Crime of Violence for State Offenses

Of the two options for modifying which state offenses qualify as a crime of violence, AFPI prefers Option Two. Option One, which only lists categories of crime, does avoid some of the issues involved in categorical matching that plagues the current analysis, but still limits an analysis of the actual conduct involved in the crime, and could unnecessarily limit certain offenses from being categorized as violent simply due to how they are labeled via state law.⁵

Option Two, which includes the bracketed language, “proscribes conduct that satisfies the elements...” would be most preferred, as it allows for a more conduct-based approach to determining whether the underlying offense should be considered a crime of violence. However, as with the concern expressed above under the federal offenses amendments, eliminating the “force” clause entirely could lead to unintended consequences, and providing one here that explicitly allows a conduct-based evaluation would be preferred.

Exclusions

⁴ Charging document, jury instructions and verdict form, a plea agreement, transcript of plea colloquy, and any fact found by the judge that the defendant agreed to. See *Shepard v. United States*, 544 U.S. 13 (2005).

⁵ Glod, *Supra*.



With the removal of the categorical approach, the Commission rightly included limitations and exclusions that a defendant can raise to avoid the over-inclusion of prior offenses that should not qualify as crimes of violence. While *mens rea* and amount-of-harm limitations are appropriate, AFPI cautions against limitations based on the actual sentence or the time served. As we have seen across the country, many violent crimes are not given adequate punishment, and allowing an offense not to qualify as a crime of violence based on a judge's sentence determination could perpetuate this leniency in ways that undermine the seriousness of the offense.

Conclusion

AFPI thanks the Commission for its dedication to this area of the Guidelines and for its willingness to solicit input from outside stakeholders. The career offender designation serves a critical function: ensuring that repeat violent offenders receive sentences that reflect the seriousness of their conduct. The proposed amendments represent meaningful progress toward a more workable framework, and AFPI remains committed to working with the Commission to ensure the final language produces a result that upholds the congressional mandate to punish such defendants at or near the maximum term authorized.

Greg Glod

Director, American Justice Policy

The America First Policy Institute

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