PROBATION OFFICERS ADVISORY GROUP

An Advisory Group of the United States Sentencing Commission

March 2, 2026

The Honorable Carlton W. Reeves
United States Sentencing Commission
Thurgood Marshall Building
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Judge Reeves,

The Probation Officers Advisory Group (POAG) submits the following written testimony to the United States Sentencing Commission (the Commission) regarding the proposed amendments issued on January 30, 2026.

***

Career Offender

Crime of Violence definition

POAG supports Option 1 for the Crime of Violence amended definition with some suggested adjustments. The majority of POAG is in support of Option 1 observe that it drastically simplifies the process by removing the categorical and modified categorical approach. While it relies heavily on a type of designation-based or title-based enumerated list, we believe that list would benefit from some expansions to capture the way similar state offenses may have alternative designations. When POAG suggested a similar approach in August of 2016, the discussion at the time expected that there would likely be a very long list of offenses, not because of an effort to label everything as violent conduct but as a means of appropriately capturing how different jurisdictions labelled similar violent conduct. For example, the list currently includes "Rape," and "Sexual Assault," but other jurisdiction may call rape or sexual assault conduct "Sexual Battery," "Criminal Sexual Conduct," or "Criminal Sexual Penetration." POAG was in agreement that, even if this approach were to cause a list of many pages of titles, it would still be simpler and more effective at capturing actual crimes of violence. We also had a few violent crimes that should be added to the list. Our suggested additions include: "Carjacking," "Aggravated Battery," "Escape," "Shooting into a Dwelling," "Aggravated Discharge of a Firearm," "Domestic Assault," "Criminal Threat," and "Infliction of Corporal Injury on a Spouse or Cohabitant." While Option 1 is simpler in its application, POAG recognizes that it places an added burden on the Commission to try to consider all the various titles of what amounts to the same or similar conduct. While a guideline such as this may end up lengthier, it is still substantially less complicated than a categorical approach or modified categorical approach.

An additional suggestion was made to further describe the "designated" as "titled," similar to what was done in synopsis of the proposed amendment. It may also be valuable to add a disclaimer, perhaps with the Inchoate offenses language that signals to the courts that these words just need to be a part of the title rather than the only words in the title. For example, if a defendant was convicted of Aggravated Assault with a Deadly Weapon, the "with a Deadly Weapon" part of the title does not invalidate the defendant's conviction as a Crime of Violence.

POAG believes Option 2 is more complicated and will create application issues similar to a conduct-based approach. It will also operate broadly to capture more offenses that do not necessarily require force. The complication of this methodology will still result from the comparison of elements and means to achieve the appropriate outcome.

A minority of POAG did not like either Option 1 or Option 2. Their concerns focused on the new litigation that would result from either methodology. The current Crime of Violence case law is established and familiar. There is also concern that it would be difficult to appropriately expand the list of offenses under Option 1 to effectively capture all the state offenses.

If the Commission is inclined to adopt Option 1, POAG is in unanimous support of the inclusion of Inchoate language at §4B1.2(a)(2).

Again, if the Commission is inclined to adopt Option 1, POAG recommends alternative Exclusion language at §4B1.2(a)(3). POAG suggests that any Crime of Violence that only scores one point under §4A1.1(c) be excluded from consideration. This approach would simplify the language proposed. It can be difficult to get court or probation records about whether a term was unsupervised, supervised, or a combination of the two. Additionally, there are other forms of state-imposed supervision that are not probation such as community control and good behavior. It would be simpler and clearer to rely on the criminal history scoring structure already in place. Additionally, it would imperfectly cover some of the same cases that would be covered by the proposed Limitation under §4B1.2(a)(4)(A). While the proposed (a)(4)(A) language includes actual time served instead of time imposed, POAG continues to observe that the amount of time served on a sentence as a metric is problematic. Probation officers have trouble uniformly obtaining records related to the amount of time served. Additionally, the reasons why a defendant is released earlier than their sentence imposed articulates often involves a myriad of reasons other than the seriousness of the offense. The use of time served on a sentence in any area of the Guidelines will result in disparity based on availability of records.

POAG was not in favor of the proposed §4B1.2(a)(4)(B), as many of the Crimes of Violence are decades old convictions. It would be extremely time consuming to relitigate the intentions of the defendant and degrees of injury perpetuated or threatened. These types of litigation would almost certainly involve the previous victim of a crime in some capacity. The availability of evidence the court may find relevant may no longer be available, leading to disparity. If the Commission intends to include the Bodily Injury language, POAG suggests removing "did not intend to inflict" as that would be the most difficult part of the initial sentence. We would also suggest leaving the standard at Bodily Injury and not adopting any of the bracketed language.

POAG supports the Recklessness and Negligence Limitation under §4B1.2(a)(4)(C) but with the alteration that the statute of conviction's *mens rea* be the controlling determination rather than the defendant's "conduct during the commission of the offense."

Limiting the Scope of Controlled Substance Offense

With regard to limiting the scope of controlled substance offenses, while there was some support for Option 1, which enumerates only certain federal drug statutes, the majority of POAG is in favor of Option 2, which allows for qualifying state convictions to continue to serve as predicate controlled substance offenses. However, POAG is split between Suboptions 2A and 2B, which limit some state drug convictions based on the sentence that was imposed.

In February 2025, POAG submitted written testimony regarding the proposal to revise the definition of "controlled substance" in USSG §4B1.2 to exclude state drug offenses by listing

specific federal statutes relating to drug offenses, as proposed in Option 1. POAG recognizes that this approach would allow for an easier and more straightforward application of the Guideline. Further, caselaw in several Circuits already prohibits the counting of certain controlled substance offenses as qualifying prior convictions. This includes instances where the state offense is broader than the guideline definition because it addresses the possession with intent to sell or deliver or purchase substances not covered by the Federal Controlled Substances Act (CSA). Additionally, if the circuit split resolves towards including state scheduled drugs, the support for Option 1 further diminishes. Despite the ease of application under Option 1, the majority of POAG members were in favor of Option 2.

Those in favor of Option 2 noted that in most cases, a state drug offense involves the same conduct as a federal drug offense. It seems disparate that the luck, or unluck, of the jurisdiction would be the reason one defendant qualifies as a career offender while another defendant does not. Additionally, limiting qualifying controlled substance offenses to specific federal drug offenses could have an unintended consequence in rural and tribal areas and smaller counties, where due to a lack of resources or crimes committed on federal land, cases are disproportionately prosecuted federally. This could result in higher levels of punishment concentrated in those population groups and rural areas. Moreover, reducing the number of predicates that qualify as a controlled substance offense will impact how often a defendant with a single Crime of Violence predicate will qualify as a career offender and, consequently, drastically reduce the total number of defendants who qualify as career offenders. Finally, POAG has previously raised the issue that there is a high downward variance rate amongst career offender cases. If Option 1 is adopted and less defendants qualify as career offenders, it may have bearing on a sentencing judge's decision to impose variances, or the amount of variance, if they no longer believe that the offense level and criminal history category is overstated. If certain offenses are disqualified from career offender eligibility, especially with a defendant who has incurred multiple convictions for state controlled substance offenses, we may see judges accounting for that aggravating conduct by fashioning a sentence within or even above the guideline range.

Although the majority of POAG is in favor of Option 2, a consensus could not be reached between Suboption 2A or 2B. However, POAG is unanimously against the bracketed exclusion language under either Suboption 2A or 2B. POAG is also unanimously against Suboption 2C for the same reason. POAG has significant concerns regarding the use of a time-served approach. POAG has previously noted that in many cases, determining the amount of time a defendant served could be impossible due to restrictions in the availability of this information or records that pertain to it, leaving concerns that the Career Offender guideline would rarely be used or disparately applied based on availability of records. Determining the amount of time served becomes even more difficult to decipher when there are multiple sentences being served at one time. Also, unlike publicly available court records, records pertaining to incarceration are not necessarily available to the public and vary per correctional system. The time a defendant serves on a sentence can also have more to do with correctional resources than the sentencing court's measurement of the degree

of seriousness of the offense. POAG believes the time-served approach would not adequately capture individuals with more severe criminal histories, who would otherwise be exposed to greater levels of punishment under the Career Offender guideline. Additionally, utilizing a time-served approach to determine career offender eligibility would be contrary and inconsistent with the method already used throughout the Guidelines of a sentence-imposed approach to determine criminal history points.

Those in favor of Suboption 2A, which limits qualifying state drug offenses to those convictions that receive three criminal history points under §4A1.1(a), believe it would have the easiest applicability while limiting qualifying state drug offenses to those that were either treated more seriously by the state court based on the original sentence imposed or to those defendants who sustain revocation, pursuant to §4A1.2(k).

The majority of POAG members in favor of Suboption 2B believe any state drug offense that resulted in a sentence imposed of 1 year should serve as a qualifying conviction for career offender. Many noted that there is little difference between a defendant who receives a sentence of 13 months and 1 day compared to a defendant who receives a sentence of 12 months. Excluding those convictions seems arbitrary, and they were in favor of the limited consideration of §4A1.1(b) cases that had a custody sentence of a year.

Definitions elsewhere in the Guidelines

With respect to Crime of Violence and Controlled Substance Offense as it relates to the Career Offender enhancement, POAG unanimously supports the Guidelines being consistent with the definition established at §4B1.2. Though less stringent than the requirements of 18 U.S.C. § 924(e), POAG observes that using the consistent rules and application found throughout the Guidelines helps users follow the same logic and standards throughout its application. Likewise, for simplification and consistent application, POAG unanimously suggests the Commission should refer to §4B1.2 when defining Crime of Violence and Controlled Substance Offense. POAG did not support the movement of the categorical and modified categorical approaches into the definitions of §2K2.1 because it retains the complexity of that system. Additionally, it would require three different approaches when trying to consider violent convictions: the new Crime of Violence, the old Crime of Violence, and the ACCA violent felony standard. In the alternative to retaining a consistent Guideline standard throughout the manual by using the same standard from §4A1.2, POAG would prefer the ACCA standard be adopted into the definition of §2K2.1. POAG also suggests moving the definitions from the commentary to the main body of the Guideline to avoid circumstances wherein the commentary is not given as much deference as the main text of the Guideline being assessed.