Dated: January 21, 2016.

David R. Pearl,

Executive Secretary, Department of the Treasury.

[FR Doc. 2016–01616 Filed 1–26–16; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Research Advisory Committee

AGENCY: Office of Financial Research, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: The Financial Research Advisory Committee for the Treasury's Office of Financial Research (OFR) is convening for its seventh meeting on Thursday, February 25, 2016, in the Cash Room, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220, beginning at 9:15 a.m. Eastern Time. The meeting will be open to the public via live webcast at *http://www.financialresearch.gov* and limited seating will also be available.

DATES: The meeting will be held on Thursday, February 25, 2016, beginning at 9:15 a.m. Eastern Time.

ADDRESSES: The meeting will be held in the Cash Room, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The meeting will be open to the public via live webcast at *http://www.financialresearch.gov.* A limited number of seats will be available for those interested in attending the meeting in person, and those seats would be on a first-come, first-served basis. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must contact the OFR by email at *OFR_FRAC@ofr.treasury.gov* by 5 p.m. Eastern Time on Thursday, February 11, 2016, to inform the OFR of their desire to attend the meeting and to receive further instructions about building clearance.

FOR FURTHER INFORMATION CONTACT: Susan Stiehm, Designated Federal Officer, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (212) 376–9808 (this is not a toll-free number), *OFR_FRAC@ofr.treasury.gov.* Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, 10(a)(2), through implementing regulations at 41 CFR 102–3.150, *et seq.*

Public Comment: Members of the public wishing to comment on the business of the Financial Research Advisory Committee are invited to submit written statements by any of the following methods:

- *Electronic Statements.* Email the Committee's Designated Federal Officer at *OFR_FRAC@ofr.treasury.gov.*
- *Paper Statements.* Send paper statements in triplicate to the Financial Research Advisory Committee, Attn: Susan Stiehm, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

The OFR will post statements on the Committee's Web site, *http://www.financialresearch.gov,* including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. The OFR will also make such statements available for public inspection and copying in the Department of the Treasury's library, Annex Room 1020, 1500 Pennsylvania Avenue NW., Washington, DC 20220 on official business days between the hours of 8:30 a.m. and 5:30 p.m. Eastern Time. You may make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: The Committee provides an opportunity for researchers, industry leaders, and other qualified individuals to offer their advice and recommendations to the OFR, which, among other things, is responsible for collecting and standardizing data on financial institutions and their activities and for supporting the work of Financial Stability Oversight Council.

This is the seventh meeting of the Financial Research Advisory Committee. Topics to be discussed among all members will include discussion of the OFR's Programmatic Approach, progress on prior Committee recommendations, Subcommittee reports to the Committee and the OFR's work related to Shadow Banking. For more information on the OFR and the Committee, please visit the OFR Web site at *http://www.financialresearch.gov.*

Dated: January 20, 2016.

Barbara Shycoff,

Chief of External Affairs.

[FR Doc. 2016–01619 Filed 1–26–16; 8:45 am]

BILLING CODE P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission to Congress of amendment to the sentencing guidelines effective August 1, 2016.

SUMMARY: Pursuant to its authority under 28 U.S.C. 994(p), the Commission has promulgated an amendment to the *Guidelines Manual.* This notice sets forth the amendment and the reason for the amendment.

DATES: The Commission has specified an effective date of August 1, 2016, for the amendment set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Matt Osterrieder, Legislative Specialist, (202) 502–4500, *pubaffairs@ussc.gov.* The amendment set forth in this notice also may be accessed through the Commission's Web site at *www.ussc.gov.*

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

Notice of the proposed amendment was published in the **Federal Register** on August 17, 2015 (*see* 80 FR 49314). The Commission held a public hearing on the proposed amendment in Washington, DC, on November 5, 2015. On January 21, 2016, the Commission submitted this amendment to Congress and specified an effective date of August 1, 2016.

Authority: 28 U.S.C. 994(a), (o), and (p); USSC Rules of Practice and Procedure 4.1.

Patti B. Saris,

Chair.

1. *Amendment:* The Commentary to § 4B1.1 captioned ''Application Notes'' is amended by inserting at the beginning of Note 1 the following new heading: ''*Definitions.*—''; by inserting at the beginning of Note 2 the following new heading: '' '*Offense Statutory Maximum'.*—''; and by inserting at the end the following new Note 4:

''4. *Departure Provision for State Misdemeanors.*—In a case in which one or both of the defendant's 'two prior felony convictions' is based on an offense that was classified as a misdemeanor at the time of sentencing for the instant federal offense, application of the career offender guideline may result in a guideline range that substantially overrepresents the seriousness of the defendant's criminal history or substantially overstates the seriousness of the instant offense. In such a case, a downward departure may be warranted without regard to the limitation in § 4A1.3(b)(3)(A).''.

Section 4B1.2(a) is amended by striking paragraph (2) as follows:

''(2) 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.'',

and inserting the following:

''(2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or explosive material as defined in 18 U.S.C. 841(c).''.

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended—in Note 1 by inserting ''*Definitions.*—'' as a heading before the beginning of the note; by striking the second and third undesignated paragraphs as follows:

'' 'Crime of violence' includes murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension of credit, and burglary of a dwelling. Other offenses are included as 'crimes of violence' if (A) that offense has as an element the use, attempted use, or threatened use of physical force against the person of another, or (B) the conduct set forth (*i.e.,* expressly charged) in the count of which the defendant was convicted involved use of explosives (including any explosive material or destructive device) or, by its nature, presented a serious potential risk of physical injury to another.

'Crime of violence' does not include the offense of unlawful possession of a firearm by a felon, unless the possession was of a firearm described in 26 U.S.C. 5845(a). Where the instant offense of conviction is the unlawful possession of a firearm by a felon, § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) provides an increase in offense level if the defendant had one or more prior felony convictions for a crime of violence or controlled substance offense; and, if the defendant is sentenced under the provisions of 18 U.S.C. 924(e), § 4B1.4 (Armed Career Criminal) will apply.'',

and inserting the following new paragraphs:

'' 'Forcible sex offense' includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (A) an offense described in 18 U.S.C. 2241(c) or (B) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

'Extortion' is obtaining something of value from another by the wrongful use of (A) force, (B) fear of physical injury, or (C) threat of physical injury.'';

and by striking the fifth undesignated paragraph as follows:

''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) is a 'crime of violence'.'';

in Note 2, at the beginning of the note, by inserting the following new heading: ''*Offense of Conviction as Focus of Inquiry.*—'';

in Note 3, at the beginning of the note, by inserting the following new heading: ''*Applicability of § 4A1.2.*—'';

and by inserting at the end the following new Note 4:

''4. *Upward Departure for Burglary Involving Violence.*—There may be cases in which a burglary involves violence, but does not qualify as a 'crime of violence' as defined in § 4B1.2(a) and, as a result, the defendant does not receive a higher offense level or higher Criminal History Category that would have applied if the burglary qualified as a 'crime of violence.' In such a case, an upward departure may be appropriate.''.

Reason for Amendment: This amendment is a result of the Commission's multi-year study of statutory and guideline definitions relating to the nature of a defendant's prior conviction (*e.g.,* ''crime of violence,'' ''aggravated felony,'' ''violent felony,'' ''drug trafficking offense,'' and ''felony drug offense'') and the impact of such definitions on the relevant statutory and guideline provisions (*e.g.,* career offender, illegal reentry, and armed career criminal). As part of this study, the Commission considered feedback from the field, including conducting a roundtable discussion on these topics and considering the varying case law interpreting these statutory and guideline definitions. In particular, the Commission has received extensive comment, and is aware of numerous court opinions, expressing a view that the definition of ''crime of violence'' is complex and unclear. The amendment is informed by this public comment and case law, as well as the Supreme Court's recent decision in *Johnson* v. *United States,* 135 S. Ct. 2551 (2015), regarding the statutory definition of ''violent felony'' in 18 U.S.C. 924(e) (commonly referred to as the ''Armed Career Criminal Act'' or ''ACCA''). While not addressing the guidelines, that decision has given rise to significant litigation regarding the guideline definition of ''crime of violence.'' Finally, the Commission analyzed a range of sentencing data, including a study of the sentences relative to the guidelines for the career offender guidelines. *See* U.S. Sent'g Comm'n, *Quick Facts: Career Offenders* (Nov. 2015) (highlighting the decreasing rate of within range guideline sentences (27.5% in fiscal year 2014), which has been coupled with increasing rates of government (45.6%) and non-government sponsored below range sentences (25.9%)).

The amendment makes several changes to the definition of ''crime of violence'' at § 4B1.2 (Definitions of Terms Used in Section 4B1.1), which, prior to this amendment, was defined as any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that

- has as an element the use, attempted use, or threatened use of physical force against the person of another (''force clause'' or ''elements clause''), *see* § 4B1.2(a)(1);
- is murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension of credit, burglary of a dwelling, or involves the use of explosives (''enumerated offenses''), *see* § 4B1.2(a)(2) and comment. (n.1); or
- otherwise involves conduct that presents a serious potential risk of physical injury to another (''residual clause''), *see* § 4B1.2(a)(2).

The ''crime of violence'' definition at § 4B1.2 is used to trigger increased sentences under several provisions in the Guidelines Manual, the most significant of which is § 4B1.1 (Career Offender). *See also* §§ 2K1.3, 2K2.1, 2S1.1, 4A1.1(e), 7B1.1. The career offender guideline implements a directive to the Commission set forth at 28 U.S.C. 994(h), which in turn identifies offenders for whom the guidelines must provide increased punishment. Tracking the criteria set

forth in section 994(h), the Commission implemented the directive by identifying a defendant as a career offender if (1) the defendant was at least eighteen years old at the time he or she committed the instant offense of conviction; (2) the instant offense is a felony that is a crime of violence or a controlled substance offense, and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense. Where these criteria are met, the directive at section 994(h), and therefore § 4B1.1, provides for significantly higher sentences under the guidelines, such that the guideline range is ''at or near the maximum [term of imprisonment] authorized.'' Commission data shows that application of § 4B1.1 resulted in an increased final offense level, an increased Criminal History Category, or both for 91.3 percent of defendants sentenced under the career offender guideline in fiscal year 2014. *See* U.S. Sent'g Comm'n, *Quick Facts: Career Offenders* (Nov. 2015) (46.3% of career offenders received an increase in both final offense level (from an average of 23 levels to 31 levels) and criminal history category (from an average of category IV to category VI); 32.6% had just a higher final offense level (from an average of 23 levels to 30 levels); and 12.4% had just a higher Criminal History Category (from an average of category IV to category VI)).

Residual Clause

First, the amendment deletes the ''residual clause'' at § 4B1.2(a)(2). Prior to the amendment, the term ''crime of violence'' in § 4B1.2 included any offense that ''otherwise involves conduct that presents a serious potential risk of physical injury to another.'' In *Johnson,* the Supreme Court considered an identical residual clause relating to the statutory definition of ''violent felony'' in the Armed Career Criminal Act. The Court held that using the ''residual clause'' to classify an offense as a ''violent felony'' violated due process because the clause was unconstitutionally vague. *See Johnson,* 135 S. Ct. at 2563. While the Supreme Court in *Johnson* did not consider or address the sentencing guidelines, significant litigation has ensued regarding whether the Supreme Court's holding in *Johnson* should also apply to the residual clause in § 4B1.2. *Compare United States* v. *Matchett,* 802 F.3d 1185 (11th Cir. 2015) (rejecting the argument that the residual clause in § 4B1.2 is unconstitutionally vague in light of *Johnson*) and *United States* v. *Wilson,* 622 F. App'x 393, 405 n.51 (5th Cir. 2015) (in considering the applicability of *Johnson,* noting ''[o]ur case law indicates that a defendant cannot bring a vagueness challenge against a Sentencing Guideline''), *with United States* v. *Taylor,* 803 F.3d 931 (8th Cir. 2015) (finding that previous circuit precedent holding that the guidelines cannot be unconstitutionally vague because they do not proscribe conduct is doubtful after *Johnson*); *United States* v. *Madrid,* 805 F.3d 1204, 1211 (10th Cir. 2015) (holding that that the residual clause of § 4B1.2(a)(2) is void for vagueness); *United States* v. *Harbin,* 610 F. App'x 562 (6th Cir. 2015) (finding that defendant is entitled to the same relief as offenders sentenced under the residual clause of the ACCA); and *United States* v. *Townsend,* __ F. App'x __, 2015 WL 9311394, at *4 (3d Cir. Dec. 23, 2015) (remanding for resentencing in light of the government's concession that, pursuant to *Johnson,* the defendant should not have been sentenced as a career offender).

The Commission determined that the residual clause at § 4B1.2 implicates many of the same concerns cited by the Supreme Court in *Johnson,* and, as a matter of policy, amends § 4B1.2(a)(2) to strike the clause. Removing the residual clause has the advantage of alleviating the considerable application difficulties associated with that clause, as expressed by judges, probation officers, and litigants. Furthermore, removing the clause will alleviate some of the ongoing litigation and uncertainty resulting from the *Johnson* decision.

List of Enumerated Offenses

With the deletion of the residual clause under subsection (a)(2), there are two remaining components of the ''crime of violence'' definition—the ''elements clause'' and the ''enumerated offenses clause.'' The ''elements clause'' set forth in subsection (a)(1) remains unchanged by the amendment. Thus, any offense under federal or state law, punishable by imprisonment for a term exceeding one year, qualifies as a ''crime of violence'' if it has as an element the use, or attempted use, or threatened use of physical force against the person of another. Importantly, such an offense may, but need not, be specifically enumerated in subsection (a)(2) to qualify as a crime of violence.

The ''enumerated offense clause'' identifies specific offenses that qualify as crimes of violence. In applying this clause, courts compare the elements of the predicate offense of conviction with the elements of the enumerated offense in its ''generic, contemporary definition.'' As has always been the case, such offenses qualify as crimes of violence regardless of whether the offense expressly has as an element the use, attempted use, or threatened use of physical force against the person of another. While most of the offenses on the enumerated list under § 4B1.2(a)(2) remain the same, the amendment does revise the list in a number of ways to focus on the most dangerous repeat offenders. The revised list is based on the Commission's consideration of public hearing testimony, a review of extensive public comment, and an examination of sentencing data relating to the risk of violence in these offenses and the recidivism rates of career offenders. Additionally, the Commission's revisions to the enumerated list also consider and reflect the fact that offenses not specifically enumerated will continue to qualify as a crime of violence if they satisfy the elements clause.

As amended, the enumerated offenses include murder, voluntary manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or explosive material as defined in 18 U.S.C. 841(c). For easier application, all enumerated offenses are now included in the guideline at § 4B1.2; prior to the amendment, the list was set forth in both § 4B1.2(a)(2) and the commentary at Application Note 1.

Manslaughter, which is currently enumerated in Application Note 1, is revised to include only voluntary manslaughter. While Commission analysis indicates that it is rare for involuntary manslaughter to be identified as a predicate for the career offender guideline, this change provides that only voluntary manslaughter should be considered. This is also consistent with the fact that involuntary manslaughter generally would not have qualified as a crime of violence under the ''residual clause.'' *See Begay* v. *United States,* 553 U.S. 137 (2008) (limiting crimes covered by the ACCA residual clause to those roughly similar in kind and degree of risk posed as the enumerated offenses, which typically involve ''purposeful, violent, and aggressive conduct'').

The amendment deletes ''burglary of a dwelling'' from the list of enumerated offenses. In implementing this change, the Commission considered that (1) burglary offenses rarely result in physical violence, (2) ''burglary of a dwelling'' is rarely the instant offense of conviction or the determinative predicate for purposes of triggering higher penalties under the career offender guideline, and (3) historically, career offenders have rarely been rearrested for a burglary offense after

release. The Commission considered several studies and analyses in reaching these conclusions.

First, several recent studies demonstrate that most burglaries do not involve physical violence. *See* Bureau of Justice Statistics, *National Crime Victimization Survey, Victimization During Household Burglary* (Sept. 2010) (finding that a household member experienced some form of violent victimization in 7% of all household burglaries from 2003 to 2007); Richard S. Culp et al., *Is Burglary a Crime of Violence? An Analysis of National Data 1998–2007,* at 29 (2015), *available at https://www.ncjrs.gov/pdffiles1/nij/grants/248651.pdf* (concluding that 7.6% of burglaries between 1998 and 2007 resulted in actual violence or threats of violence, while actual physical injury was reported in only 2.7% of all burglaries); *see also* United States Department of Justice, Federal Bureau of Investigation, *Uniform Crime Report, Crime in the United States* (2014) (classifying burglary as a ''property crime'' rather than a ''violent crime''). Second, based upon an analysis of offenders sentenced in fiscal year 2014, the Commission estimates that removing ''burglary of a dwelling'' as an enumerated offense in § 4B1.2(a)(2) will reduce the overall proportion of offenders who qualify as a career offender by less than three percentage points. The Commission further estimates that removing the enumerated offense would result in only about five percent of offenders sentenced under USSG § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) receiving a lower base offense level than would currently apply. Finally, a Commission analysis of recidivism rates for career offenders released during calendar years 2004 through 2006 indicates that about five percent of such offenders were rearrested for a burglary offense during the eight years after their release.

In reaching this conclusion, the Commission also considered that courts have struggled with identifying a uniform contemporary, generic definition of ''burglary of dwelling.'' In particular, circuits have disagreed regarding whether the requirement in *Taylor* v. *United States,* 495 U.S. 575, 598 (1990), that the burglary be of a ''building or other structure'' applies in addition to the guidelines' requirement that the burglary be of a ''dwelling.'' *Compare United States* v. *Henriquez,* 757 F.3d 144, 148–49 (4th Cir. 2014); *United States* v. *McFalls,* 592 F.3d 707 (6th Cir. 2010); *United States* v. *Wenner,* 351 F.3d 969 (9th Cir. 2003) *with United States* v. *Ramirez,* 708 F.3d 295, 301 (1st Cir. 2013); *United States* v. *Murillo-Lopez,* 444 F.3d 337, 340 (5th Cir. 2006); *United States* v. *Rivera-Oros,* 590 F.3d 1123 (10th Cir. 2009); *United States* v. *McClenton,* 53 F.3d 584 (3d Cir. 1995); *United States* v. *Graham,* 982 F.2d 315 (8th Cir. 1992).

Although ''burglary of a dwelling'' is deleted as an enumerated offense, the amendment adds an upward departure provision to § 4B1.2 to address the unusual case in which the instant offense or a prior felony conviction was any burglary offense involving violence that did not otherwise qualify as a ''crime of violence.'' This departure provision allows courts to consider all burglary offenses, as opposed to just burglaries of a dwelling, and reflects the Commission's determination that courts should consider an upward departure where a defendant would have received a higher offense level, higher Criminal History Category, or both (*e.g.,* where the defendant would have been a career offender) if such burglary had qualified as a ''crime of violence.''

Finally, the amendment adds offenses that involve the ''use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or an explosive material as defined in 18 U.S.C. 841(c)'' to the enumerated list at § 4B1.2(a)(2). This addition is consistent with long-standing commentary in § 4B1.2 categorically identifying possession of a firearm described in 26 U.S.C. 5845(a) as a ''crime of violence,'' and therefore maintains the status quo. The Commission continues to believe that possession of these types of weapons (*e.g.,* a sawed-off shotgun or sawed-off rifle, silencer, bomb, or machine gun) inherently presents a serious potential risk of physical injury to another person. Additionally, inclusion as an enumerated offense reflects Congress's determination that such weapons are inherently dangerous and, when possessed unlawfully, serve only violent purposes. *See also* USSG App. C, amend. 674 (eff. Nov. 1, 2004) (expanding the definition of ''crime of violence'' in Application Note 1 to § 4B1.2 to include unlawful possession of any firearm described in 26 U.S.C. 5845(a)).

Enumerated Offense Definitions

The amendment also adds definitions for the enumerated offenses of forcible sex offense and extortion. The amended guideline, however, continues to rely on existing case law for purposes of defining the remaining enumerated offenses. The Commission determined that adding several new definitions could result in new litigation, and that it was instead best not to disturb the case law that has developed over the years.

As amended, ''forcible sex offense'' includes offenses with an element that consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. Consistent with the definition in § 2L1.2 (Unlawfully Entering or Remaining in the United States), this addition reflects the Commission's determination that certain forcible sex offenses which do not expressly include as an element the use, attempted use, or threatened use of physical force against the person of another should nevertheless constitute ''crimes of violence'' under § 4B1.2. *See also* USSG App. C, amend. 722 (eff. Nov. 1, 2008) (clarifying the scope of the term ''forcible sex offense'' as that term is used in the definition of ''crime of violence'' in § 2L1.2, Application Note 1(B)(iii)).

The new commentary also provides that the offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (A) an offense described in 18 U.S.C. 2241(c), or (B) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States. This addition makes clear that the term ''forcible sex offense'' in § 4B1.2 includes sexual abuse of a minor and statutory rape where certain specified elements are present.

''Extortion'' is defined as ''obtaining something of value from another by the wrongful use of (i) force, (ii) fear of physical injury, or (iii) threat of physical injury.'' Under case law existing at the time of this amendment, courts generally defined extortion as ''obtaining something of value from another with his consent induced by the wrongful use of force, fear, or threats'' based on the Supreme Court's holding in *United States* v. *Nardello,* 393 U.S. 286, 290 (1969) (defining ''extortion'' for purposes of the Hobbs Act). Consistent with the Commission's goal of focusing the career offender and related enhancements on the most dangerous offenders, the amendment narrows the generic definition of extortion by limiting the offense to those having an element of force or an element of fear or threats ''of physical injury,'' as opposed to non-violent threats such as injury to reputation.

Departure Provision at § 4B1.1

Finally, the amendment adds a downward departure provision in § 4B1.1 for cases in which one or both of the defendant's ''two prior felony convictions'' is based on an offense that is classified as a misdemeanor at the time of sentencing for the instant federal offense.

An offense (whether a ''crime of violence'' or a ''controlled substance offense'') is deemed to be a ''felony'' for purposes of the career offender guideline if it is punishable by imprisonment for a term exceeding one year. This definition captures some state offenses that are punishable by more than a year of imprisonment, but are in fact classified by the state as misdemeanors. Such statutes are found, for example, in Colorado, Iowa, Maryland, Massachusetts, Michigan, Pennsylvania, South Carolina, and Vermont.

The Commission determined that the application of the career offender guideline where one or both of the defendant's ''two prior felony convictions'' is an offense that is classified as a misdemeanor may result in a guideline range that substantially overrepresents the seriousness of the defendant's criminal history or substantially overstates the seriousness of the instant offense. While recognizing the importance of maintaining a uniform and consistent definition of the term ''felony'' in the guidelines, the Commission determined that it is also appropriate for a court to consider the seriousness of the prior offenses (as reflected in the classification assigned by the convicting jurisdiction) in deciding whether the significant increases under the career offender guideline are appropriate. Such consideration is consistent with the structure used by Congress in the context of the Armed Career Criminal Act. *See* 18 U.S.C. 921(a)(20) (providing, for purposes of Chapter 44 of Title 18, that ''crime punishable by imprisonment for a term exceeding one year'' does not include a State offense classified as a misdemeanor and punishable by two years or less). It is also consistent with the court's obligation to account for the ''nature and circumstances of the offense and the history and characteristics of the defendant.'' *See* 18 U.S.C. 3553(a)(1).

[FR Doc. 2016–01587 Filed 1–26–16; 8:45 am]

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