

CRIME OF VIOLENCE vs. VIOLENT FELONY

	Crime of Violence (USSG § 4B1.2)	Violent Felony (ACCA, 18 U.S.C. § 924(e)(2)(B))
Definition	“any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that – (1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or (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.”	“any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such terms if committed by an adult 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, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.”
Time limit	USSG § 4A1.2 governs (§ 4B1.2, cmt. n.3): Sentence > 13 months: Yes if imposed within 15 years or resulted in D being incarcerated during any part of the 15 year period. USSG § 4A1.2(e)(1) Yes as to any sentence imposed within 10 years. USSG § 4A1.2(e)(2)	No time limit.
Count separately?	Yes, if offenses separated by an intervening arrest If no intervening arrest, still yes, <u>unless</u> – offenses charged in same charging instrument OR – sentences imposed on same day USSG § 4A1.2(a)(2)	Only if committed “on occasions different from one another.” Criminal “episodes” count separately [can be same date]. “An episode is an incident that is part of a series, but forms a separate unit within the whole. Although related to the entire course of events, an episode is a punctuated occurrence with a limited duration.” <i>United States v. McCauley</i> , 548 F.3d 440, 447-48 (6th Cir. 2008).
Enumerated offenses	Burglary of a <u>dwelling</u> , arson, or extortion, involves use of explosives	Burglary, arson, or extortion, involves use of explosives Burglary = generic, “unlawful or unprivileged entry into, or remaining in, a <u>building</u> or other <u>structure</u> , with intent to commit a crime” (<i>Taylor</i>).
Juvenile convictions	No – “prior felony conviction” means prior adult federal or state conviction (but counts if classified as adult conviction even though D was a minor). § 4B1.2 cmt. n.1; § 2K2.1 cmt. n.1.	Yes, if it is an act of juvenile delinquency involving the use or carrying of a <u>firearm</u> , <u>knife</u> , or <u>destructive device</u> that would be punishable by imprisonment for such terms if committed by an adult. Categorical approach governs (not facts as to use of weapon). <i>United States v. Wells</i> , 473 F.3d 640, 648-49 (6th Cir. 2007).
Misdemeanors	Yes, if punish by term of imprisonment exceeding one year and receives crim hist pts USSG § 4B1.2, app. n.1	No as to state offenses classified as misdemeanors and punishable by term of imprisonment of two years or less. 18 U.S.C. § 921(1)(20).

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Possession of sawed-off shotgun	Yes (<i>Hawkins</i> 2008)	No (<i>Amos</i> 2007)
Fleeing & Eluding (any degree)	Yes (<i>Young</i>) [But note <i>Sykes</i> , pending SCt]	Yes (same)
Resisting & Obstructing	Maybe – consult <i>Shepard</i> documents – failure to obey lawful command (no) but active resist/assault (yes) (<i>Mosley</i>) Running away only: no (<i>Gibbs</i>)	Maybe (same)
Assault &/or Battery	Maybe – consult <i>Shepard</i> documents – unwanted touching without force (no) but violations involving violent force (yes) (<i>Johnson</i> - note, did not address residual clause)	Maybe (same)
Escape	Maybe – consult <i>Shepard</i> documents – failure to report and walkaway (no) but active escape (yes) (<i>Chambers</i>)	Maybe (same)

Useful summary by offense type: 119 A.L.R. Fed. 319