

# Criminal History

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## Chapter Four

6/17/2014

**SENTENCING TABLE**  
(in months of imprisonment)

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327
35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life

# Numerous “Rules” in Chapter Four

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- Typically clear regarding previous federal record
- Issues more likely to arise regarding previous state/local record
  - Look to case law
  - Established methods used in your court for recurring issues

# Criminal History

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- ✓ “Prior Sentences”  
(1, 2, or 3 points each)
- ✓ “Status”  
(2 points)

# Criminal History Points

## Prior Offense Committed at 18 or Older

<b>Points*</b>	<b>Sentence</b>	<b>Time Frame</b> (Earliest Date of Relevant Conduct)
<b>3</b>	<b>&gt;13 months</b>	Within 15 yrs. of prior sentence imposition or release
<b>2</b>	<b>≥60 days</b>	Within 10 yrs. of prior sentence imposition
<b>1</b> <b>(max of 4)</b>	<b>All others**</b>	Within 10 yrs. of prior sentence imposition

\* If otherwise countable

\*\* Exceptions may apply

# Criminal History Points

## Prior Offense Committed Before 18

<b>Points*</b>	<b>Sentence</b>	<b>Time Frame</b> (Earliest Date of Relevant Conduct)
<b>3</b>	<b>Only if convicted as an adult and &gt;13 months</b>	Within 15 yrs. of prior sentence imposition or release
<b>2</b>	<b>≥ 60 days</b>	Within 5 yrs. of prior sentence imposition or release
<b>1</b> (max of 4)	<b>All others**</b>	Within 5 yrs. of prior sentence imposition

\* If otherwise countable

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# Length of Prior Sentences

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## §4A1.2(a) and App. Note 2

- Set by maximum sentence imposed
  - If sentence or any portion is suspended, the maximum is established by the unsuspended portion
- Unaffected by release
  - *E.g.*, release to parole or for “good time”

# Some Considerations in Establishing a “Prior Sentence”

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1. Is it part of relevant conduct?
2. Is it within the time frame?
3. Treatment of multiple prior sentences
4. Excluded offenses
5. Various other considerations



# **Is the Previous Sentence Part of Relevant Conduct?**

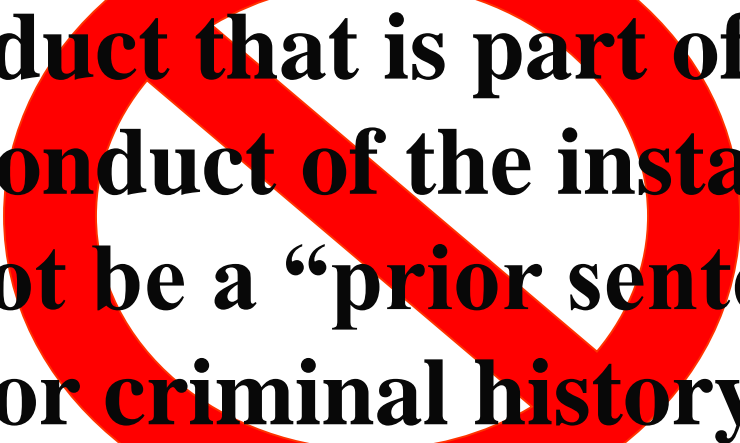
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# “Prior Sentence”

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§4A1.2(a)(1) & App. Note 1

**Conduct that is part of the relevant conduct of the instant offense will not be a “prior sentence” for criminal history**



## “Prior Sentence” (cont.)

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### §4A1.2(a)(1) & App. Note 1

**Note:** Some Chapter Two guidelines that consider a defendant’s prior convictions and certain other conduct give direction about also using those considerations in Criminal History, *e.g.*,

§2K2.1 (Felon in Possession), App. Note 10;

§2L1.2 (Illegal Reentry), App. Note 6

# **Is the Previous Sentence Within the Time Frame?**

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# Criminal History Points

## Prior Offense Committed at 18 or Older

Points*	Sentence	Time Frame (Earliest Date of Relevant Conduct)
3	>13 months	<b>Within 15 yrs. of prior sentence imposition or release</b>
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# Criminal History Points

## Prior Offense Committed Before 18

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# The Interplay Between Criminal History Time Frames and Relevant Conduct

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15 years

10 years

5 years

**Earliest Date of Relevant Conduct**

Offense of Conviction

Date of Plea /Verdict

Date of Sentencing

# Relevant Conduct and “Status”

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## §4A1.1(d) & App. Note 4

- “Status” if under criminal justice sentence during any relevant conduct

Note: “status” can only count if the sentence from which it resulted has been counted



# Treatment of Multiple Prior Sentences

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§4A1.2(a)(2)

# Multiple Prior Sentences

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## §4A1.2(a)(2)

- Requires a determination of whether multiple prior sentences are counted “separately” or as a “single sentence”

# Threshold Determination: Intervening Arrest

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§4A1.2(a)(2)

Multiple prior sentences for offenses  
separated by an intervening arrest  
are counted separately

# Examples: Separated by Intervening Arrest

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offense  
**arrested**  
offense  
**arrested**

**Intervening  
Arrest**

offense  
offense  
offense  
**arrested**

**Not an  
Intervening  
Arrest**

offense  
offense  
offense  
**arrested**  
**arrested**  
**arrested**

**Not an  
Intervening  
Arrest**

# “Intervening Arrest”

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§4A1.2(a)(2)

“i.e., the defendant is arrested for *the first offense* prior to committing *the second offense*”

# Examples:

## Separated by Intervening Arrest

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Theft 1 offense  
**Arrested Theft 1**  
Theft 2 offense  
**Arrested Theft 2**

**Intervening  
Arrest for  
Thefts 1 & 2**

Theft 1 offense  
**Arrested DUI**  
Theft 2 offense  
**Arrested Thefts 1 & 2**

**Not an  
Intervening  
Arrest for  
Thefts 1 & 2**

# Single Sentence Criteria

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## §4A1.2(a)(2)

Multiple prior sentences will be treated as a “single sentence” *if*

1. Prior sentences are for offenses **NOT** separated by an intervening arrest

**AND**

2. The offenses *either*

- Were named in the same charging document, *or*
- Resulted in sentences imposed on the same day

# Impact of a “Single Sentence”

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## §4A1.2(a)(2)

Rather than add points for each prior sentence:

- If concurrent sentences
  - Use the longest sentence
- If consecutive sentences
  - Use the aggregate length of the sentences



# Point Assignments and “Single” Sentences

## Example **Consecutive** Sentences

<u>Length</u>	<u>Point Assignments</u>	
	<u>“Single Sentence”</u>	<u>Counted Separately</u>
1 mo.		1 pt.
4 mos. <b>consec.</b>	}	2 pts.
<u>9 mos. <b>consec.</b></u>		<u>2 pts.</u>
<b>14 mos.</b>		<b>3 pts.</b>

# Point Assignments and “Single” Sentences

## Example **Concurrent** Sentences

<u>Length</u>	<u>Point Assignments</u>	
	<u>“Single Sentence”</u>	<u>Counted Separately</u>
1 mo.		1 pt.
4 mos. <b>concur.</b>		2 pts.
<u>9 mos. <b>concur.</b></u>		<u>2 pts.</u>
<b>9 mos.</b>	<b>2 pts.</b>	<b>5 pts.</b>

# A “Single Sentence” That Includes Crimes of Violence

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## §4A1.1(e)

- When multiple prior sentences are treated as a “single sentence,” §4A1.1(e) adds 1 point for each crime of violence that did not result in additional points under §4A1.1(a), (b), or (c)

## A “Single Sentence” That Includes Crimes of Violence (cont.)

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### §4A1.1(e)

- Example:
  - Defendant was convicted of 3 bank robberies that had not been separated by intervening arrests
  - Defendant was sentenced on the same day to 5 years for each robbery to run concurrently
  - Single sentence: 3 points (§4A1.1(a))
  - 1 point added for crime of violence that did not receive points: 2 additional points (§4A1.1(e))

# Significance of Multiple Prior Sentences Being Treated as a Single Sentence

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- Typically results in fewer criminal history points
- Possible impact on application of certain other guideline provisions, *e.g.*,
  - counted as only a single prior in the determination of §4B1.1 (Career Offender, §4B1.2(c)) and in base offense levels of §2K2.1 (Firearms Offenses)

# Excluded Offenses

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§4A1.2(c)(1) & (c)(2)

# Excluded Offenses

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## §4A1.2(c)(1) & (c)(2) & (o)

- §4A1.2(c)(1) - List of misdemeanors and petty offenses that are only counted when:
  - The sentence was probation of more than one year
  - The sentence was imprisonment of at least thirty days
  - The prior offense was similar to an instant offense
  - *E.g.*, driving without license or with suspended license

## Excluded Offenses (cont.)

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### §4A1.2(c)(1) & (c)(2) & (o)

- §4A1.2(c)(2) - List of misdemeanor and petty offenses that are never counted
  - *E.g.*, hitchhiking
- “Misdemeanor” means having a maximum statutory penalty of one year or less
  - Note: All such offenses are counted if a “felony offense” (*i.e.*, maximum of over 1 yr.)



# Other Considerations

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- Expungements, diversionary dispositions, pardons
  - §4A1.2(f) & (j), App. Notes 9 & 10
- Prior revocations of supervision
  - §4A1.2(k) and App. Note 11
  - Note: this can affect the “time frame” for counting the prior sentence

# General Approach in Handling Revocations: Add time imposed at original sentencing with time imposed upon revocation

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- Original sentence 3 yrs. imprisonment, suspended upon service of 1 yr. w/ 5 yrs. probation to follow
- Probation revoked; 6 mos. imposed

1 yr. original sentence

+ 6 mos. revocation sentence

1 yr. 6 mos. = **3 points**

# “Overrides”

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Chapter Four, Part B  
(Also §3A1.4 - Terrorism)

# Chapter Three and Chapter Four “Overrides”

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§3A1.4

Terrorism

§§4B1.1 - 4B1.2

Career Offender

§4B1.3

Criminal Livelihood

§4B1.4

Armed Career Criminal

§4B1.5

Repeat and Dangerous  
Sex Offender Against  
Minors

# §4B1.1 Career Offender Criteria

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- Defendant at least 18 at time of instant offense
- Instant offense of conviction is a felony for a “crime of violence” or a “controlled substance offense”
- At least two prior felony convictions for a “crime of violence” or “controlled substance offense,” counted *separately* under the provisions of §4A1.1(a), (b), or (c)

# Career Offender “Override”

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## §4B1.1

- Criminal History Category is VI
- Offense level determined by a table based on statutory maximum
  - Unless the offense level from Chapters Two and Three is greater

<u>Statutory Maximum</u>	<u>Offense Level</u> *
Life	37
25 years +	34
20 years +	32
15 years +	29
10 years +	24
5 years +	17
More than 1 year	12

\* Decrease by number of levels (0 or -2 or -3)  
at §3E1.1 (Acceptance of Responsibility)

END