

# **Criminal History Exercises With Analysis**

**United States Sentencing Commission  
Office of Education & Sentencing Practice**

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## Criminal History Exercises

Each of the following exercises is designed to focus on the application of a single or a couple of discrete “rules” found in the guidelines for Criminal History. Unless an exercise indicates otherwise, assume that none of the other “rules” are at issue in a given exercise.

### Part I

1. The defendant was previously sentenced on January 4, 2011, to a two years’ imprisonment. On April 4, 2011, the judge modified the sentence to time served, with the balance suspended upon service of three years’ probation.

How many criminal history points are assigned?

**Answer:** *2 criminal history points under §4A1.1(b) based on a sentence of three months (which was the length of “time served”).*

**Analysis:**

*§4A1.2(b)(2): “If part of a sentence of imprisonment was suspended, ‘sentence of imprisonment’ refers only to the portion that was not suspended.” In this case the time served prior to the balance suspended was three months.*

2. The defendant has a previous sentence of three years’ probation with the condition of imprisonment of 60 days.

How many criminal history points are assigned?

**Answer:** *2 criminal history points under §4A1.1(b).*

**Analysis:**

*§4A1.2, Application Note 2 (last sentence): “A sentence of probation is to be treated as a sentence under §4A1.1(c) unless a condition of probation requiring imprisonment of at least sixty days was imposed.”*

3. The defendant has a prior conviction for which she was sentenced to an indeterminate sentence of one to five years, for which she served one year.

How many criminal history points are assigned?

**Answer:** 3 criminal history points under §4A1.1(a), based on the maximum imposed sentence of five years.

**Analysis:**

§4A1.2(b)(1): “The term ‘sentence of imprisonment’ means a sentence of incarceration and refers to the maximum sentence imposed.”

§4A1.2, Application Note 2: “. . . For the purposes of applying §4A1.1(a), (b), or (c), the length of a sentence of imprisonment is the stated maximum (e.g., in the case of a determinate sentence of five years, the stated maximum is five years; in the case of an indeterminate sentence of one to five years, the stated maximum is five years; in the case of an indeterminate sentence for a term not to exceed five years, the stated maximum is five years . . .”

4. The defendant was convicted on July 1, 2015, of the instant federal offense of mail fraud, and is scheduled for sentencing on October 1, 2015. On August 3, 2015, he was convicted in state court for DUI and sentenced to 30 days in jail.

Will the state sentence for the DUI be counted for criminal history purposes? If so, how many criminal history points are assigned?

**Answer:** 1 criminal history point under §4A1.1(c) for a 30-day prior sentence. DUI is a countable offense. The sentence was imposed prior to the sentencing for the instant federal offense, and the DUI conduct was not relevant conduct of the instant federal offense.

**Analysis:**

§4A1.2, Application Note 5: “Convictions for driving while intoxicated or under the influence (and similar offenses by whatever name they are known) are always counted, without regard to how the offense is classified.”

§4A1.2(a)(1): “The term ‘**prior sentence**’ means any sentence previously imposed upon adjudication of guilt, whether by guilty plea, trial, or plea of nolo contendere, for **conduct not part of the instant offense.**”

§4A1.2, Application Note 1: “‘Prior sentence’ means a sentence imposed prior to sentencing on the instant offense, other than a sentence for conduct that is part of the instant offense. See §4A1.2(a). A sentence imposed after the defendant’s commencement of the instant offense, but prior to sentencing on the instant offense, is a prior sentence if it was for conduct other than conduct that was part of the instant offense. **Conduct that is part of the instant offense means conduct that is relevant conduct** to the instant offense under the provisions of §1B1.3 (Relevant Conduct).”

5. The defendant has a previous state sentence of 90 days’ imprisonment for drug distribution, resulting from the sale of drugs to an undercover agent. The defendant’s instant federal offense of conviction is for the sale of drugs on a date before the defendant sustained the state conviction. It has been determined that the defendant’s course of conduct in the instant federal offense includes the sale to the undercover agent that was the basis for the previous state sentence.

Will the state sentence be counted as a prior sentence? If so, how many criminal history points are assigned?

**Answer:** No, the conduct in the state sentence has been established as being part of the relevant conduct of the instant federal offense of conviction, so it is not a “prior sentence,” and no criminal history points will be added.

**Analysis:**

§4A1.2(a)(1): “The term ‘**prior sentence**’ means any sentence previously imposed upon adjudication of guilt, whether by guilty plea, trial, or plea of nolo contendere, for **conduct not part of the instant offense.**”

§4A1.2, Application Note 1: “‘Prior sentence’ means a sentence imposed prior to sentencing on the instant offense, other than a sentence for conduct that is part of the instant offense. See §4A1.2(a). . . . **Conduct that is part of the instant offense means conduct that is relevant conduct** to the instant offense under the provisions of §1B1.3 (Relevant Conduct).”

NOTE regarding relevant conduct, that in the determination as to whether conduct is in the “same course of conduct or common scheme or plan as the offense of conviction” so as to be relevant conduct under the provisions of §1B1.3(a)(2), **the offense conduct associated with a sentence that was imposed prior to the commission of the instant federal offense of conviction is not part of the same course of conduct or common scheme or plan.** See §1B1.3(a)(2), Application Note 8.

6. The defendant's instant federal offense of conviction is theft from interstate shipment on 1/1/2014, which has been established as the earliest date of the defendant's relevant conduct. The defendant was convicted of the instant offense on 6/1/2015 and is awaiting sentencing. Defendant has two prior convictions:

Date of Arrest	Conviction/Court	Date/Sentence
1/3/1996	Distribution of Cocaine State Court	2/15/1997 - 5 years' imprisonment 2/15/1998 - Paroled 6/6/1998 - Parole revoked and imprisoned for 18 months 12/5/1999 - Released from custody

Is this sentence counted? If so, how many criminal history points result?

**Answer:** Yes, because it is a sentence greater than 13 months that resulted in the defendant being incarcerated within 15 years of the earliest date of relevant conduct of the instant federal offense. This results in 3 criminal history points under §4A1.1(a).

**Analysis:**

§4A1.2(e)(1), *Applicable Time Period*, directs: “Any prior sentence of imprisonment exceeding one year and one month that was imposed within fifteen years of the defendant’s commencement of the instant offense is counted. Also count any prior sentence of imprisonment exceeding one year and one month, whenever imposed, that resulted in the defendant being incarcerated during any part of such fifteen-year period.”

§4A1.2, *Application Note 8*: “. . . As used in §4A1.2(d)(2) and (e), the term ‘commencement of the instant offense’ includes any relevant conduct. See §1B1.3 (Relevant Conduct).”

§4A1.2(k)(2): “Revocation of probation, parole, supervised release, special parole, or mandatory release may affect the time period under which certain sentences are counted as provided in §4A1.2(d)(2) and (e). For the purposes of determining the applicable time period, use the following: (A) in the case of an adult term of imprisonment totaling more than one year and one month, the date of last release from incarceration on such sentence (see §4A1.2(e)(1) . . . ;”

As the earliest date of relevant conduct in the instant federal offense was January 1, 2014, the applicable 15-year time period for this sentence extends back to January

**2, 1999.** *The parole revocation of June 6, 1998, resulted in the defendant being **incarcerated on this sentence as recently as December 5, 1999**, which is within the applicable time period.*

*[NOTE: Had the defendant's release from incarceration to parole on February 15, 1998, been the defendant's last incarceration on this sentence, it would have fallen outside the applicable time period and the sentence would not have been counted. Or if the defendant was released from incarceration for the parole revocation prior to January 2, 1999, the sentence would not have been outside the applicable time period and would not have been counted.]*

Date of Arrest	Conviction/Court	Date/Sentence
6/23/2002	Grand Larceny State Court	12/10/2002 - 5 years' probation 11/18/2006 - Probation revoked and sentenced to 3 years' imprisonment

Is this sentence counted? If so, how many criminal history points result?

**Answer:** *Yes, because a sentence of greater than 13 months results from the addition of the revocation imprisonment sentence (3 years) to the original sentence (which had no imprisonment), and the defendant was incarcerated within 15 years of the earliest date of relevant conduct of the instant federal offense. This results in 3 criminal history points under §4A1.1(a).*

**Analysis:**

*§4A1.2(k)(1): Revocations of Probation, Parole, Mandatory Release, or Supervised Release: "In the case of a prior revocation of probation, parole, supervised release, special parole, or mandatory release, add the original term of imprisonment to any term of imprisonment imposed upon revocation. The resulting total is used to compute the criminal history points for §4A1.1(a), (b), or (c), as applicable."*

*§4A1.2(k)(2): "Revocation of probation, parole, supervised release, special parole, or mandatory release may affect the time period under which certain sentences are counted as provided in §4A1.2(d)(2) and (e). For the purposes of determining the applicable time period, use the following: (A) in the case of an adult term of imprisonment totaling more than one year and one month, the date of last release from incarceration on such sentence (see §4A1.2(e)(1) . . . ;"*

§4A1.2(e)(1), *Applicable Time Period*, directs: “Any prior sentence of imprisonment exceeding one year and one month that was imposed within fifteen years of the defendant’s commencement of the instant offense is counted. Also count any prior sentence of imprisonment exceeding one year and one month, whenever imposed, that resulted in the defendant being incarcerated during any part of such fifteen-year period.”

§4A1.2, *Application Note 8*: “. . . As used in §4A1.2(d)(2) and (e), the term ‘commencement of the instant offense’ includes any relevant conduct. See §1B1.3 (Relevant Conduct).”

As the earliest date of relevant conduct in the instant federal offense was January 1, 2014, the applicable 15-year time period for this sentence extends back to January 2, 1999. The probation revocation of November 18, 2006, resulted in the defendant being incarcerated on this sentence at least as recently as that date, which is within the applicable time period.

[NOTE: Had the defendant’s original sentence of probation on December 10, 2002, not resulted in revocation, the sentence would have been outside the applicable time from the earliest date of relevant conduct (which for a sentence of probation would be ten years), and therefore not counted for criminal history.]

7. The defendant has a previous diversionary disposition in a state adult court based upon a plea of nolo contendere in a judicial proceeding which resulted in adjudication being withheld.

Is this considered a “prior sentence” for criminal history purposes? If so, how many criminal history points are assigned?

**Answer:** Yes, 1 criminal history point under 4A1.1(c)

**Analysis:**

§4A1.2(f) - *Diversions Dispositions*: “Diversion from the judicial process without a finding of guilt (e.g., deferred prosecution) is not counted. A diversionary disposition resulting from a finding or admission of guilt, or a plea of nolo contendere, in a judicial proceeding is counted as a sentence under §4A1.1(c) even if a conviction is not formally entered, except that diversion from juvenile court is not counted.”

§4A1.2, *Application Note 9*: “*Diversions Dispositions*.—Section 4A1.2(f) requires counting prior adult diversionary dispositions if they involved a judicial determination of guilt or an admission of guilt in open court. This reflects a policy that

defendants who receive the benefit of a rehabilitative sentence and continue to commit crimes should not be treated with further leniency.”

8. The defendant has previous criminal convictions. Assign criminal history points for the following prior sentences:

Conviction	Sentence Date	Sentence	ANSWERS: Points ?
(1) Larceny	12/1/14	\$500 fine	? 1
(2) Poss. Stolen Property	3/3/14	30 days' jail	? 1
(3) DUI	7/1/13	10 days' jail	? 1
(4) Theft	3/5/13	\$1,000 fine	? 1
<b>(5) Auto Theft</b>	<b>9/7/12</b>	<b>5 years' probation</b>	<b>? 1</b>
<b>(6) Domestic Assault</b>	<b>1/8/12</b>	<b>45 days' jail, counseling &amp; restitution</b>	<b>? 1</b>
<b>(7) Drug Distribution</b>	<b>1/5/11</b>	<b>45 days' jail &amp; \$2,000 fine?</b>	<b>1</b>

**Analysis:**

§4A1.1(c): Add 1 point for each prior sentence not counted in (a) or (b), **up to a total of 4 points for this subsection.**

§4A1.1, Application Note 3: “§4A1.1(c). One point is added for each prior sentence not counted under §4A1.1(a) or (b). A maximum of four points may be counted under this subsection.”

§4A1.1 Commentary: “The total criminal history points from §4A1.1 determine the criminal history category (I-VI) in the Sentencing Table in Chapter Five, Part A. **The definitions and instructions in §4A1.2 govern the computation of the criminal history points.** Therefore, §§4A1.1 and 4A1.2 must be read together.”

Note that while a maximum of four points can be counted under §4A1.1(c), all previous sentences that meet the criteria at §4A1.2 are “countable.”



There are seven “one-pointers” in this scenario, all seven of which are countable and are counted separately, even though a maximum of four points under §4A1.1(c) are counted toward the criminal history category. So it is not that four of seven sentences got one point each and the other three got zero points each.

## **Part II**

### **Analysis generally for all the “single or separate” scenarios that follow below:**

§4A1.2(a)(2) (under Prior Sentence): “If the defendant has multiple prior sentences, determine whether those sentences are counted separately or as a single sentence. Prior sentences always are counted separately if the sentences were imposed for offenses that were separated by an intervening arrest (i.e., the defendant is arrested for the first offense prior to committing the second offense). If there is no intervening arrest, prior sentences are counted separately unless (A) the sentences resulted from offenses contained in the same charging instrument; or (B) the sentences were imposed on the same day. Count any prior sentence covered by (A) or (B) as a single sentence. See also §4A1.1(e).

For purposes of applying §4A1.1(a), (b), and (c), if prior sentences are counted as a single sentence, use the longest sentence of imprisonment if concurrent sentences were imposed. If consecutive sentences were imposed, use the aggregate sentence of imprisonment.”

The outline analysis for the “single sentence” criteria is as follows:

### **Single Sentence Criteria**

#### **§4A1.2(a)(2)**

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

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

#### **AND**

The offenses **either**

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

9. The defendant’s prior record includes convictions for three offenses of receiving stolen property, each offense committed on a different date. There was no arrest

between the offenses. Each of the offenses was subsequently charged in a separate indictment.

The defendant was sentenced on all three indictments on the same date. Each sentence was six months' imprisonment, with each of the sentences running concurrently with each other.

Are these three prior sentences counted separately or as a single sentence? How many criminal history points are assigned?

**Answer:** *A single sentence of six months' imprisonment, resulting in 2 criminal history points under §4A1.1(b)*

**Analysis:** *See analysis for "single or separate" (§4A1.2(a)(2)) above (at the beginning of Part II); the specific facts that are involved in the analysis of this scenario are underlined above in this scenario*

10. The defendant's prior record includes two robberies, the second committed after the defendant had been arrested for the first and was out on bail release. The two robbery offenses were subsequently charged in the same indictment and sentenced on the same day, resulting in concurrent sentences of five years each.

Are these two prior sentences counted separately or as a single sentence? How many criminal history points result? Will an additional criminal history point be added from §4A1.1(e) for a crime of violence that did not receive any points under §4A1.1(a), (b), or (c)?

**Answer:** *Due to the intervening arrest, these are separate sentences (counted separately). Each got a five year sentence (even though concurrently), so each gets 3 criminal history points under §4A1.1(a). The crime of violence cases get no points from §4A1.1(e), which is for sentences treated as a single sentence.*

**Analysis:** *See analysis for "single or separate" (§4A1.2(a)(2)) above (at the beginning of Part II); the specific facts that are involved in the analysis of this scenario are underlined above in this scenario*

§4A1.1(e): *"Add 1 point for each prior sentence resulting from a conviction of a crime of violence that did not receive any points under (a), (b), or (c) above because such sentence was counted as a single sentence, up to a total of 3 points for this subsection."*

§4A1.1, App. Note 5: “In a case in which the defendant received **two or more prior sentences** as a result of convictions **for crimes of violence that are counted as a single sentence** (see §4A1.2(a)(2)), one point is added under §4A1.1(e) for each such sentence that did not result in any additional points under §4A1.1(a), (b), or (c). A total of up to 3 points may be added under §4A1.1(e).”