



# **Criminal History: Chapter Four**

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# Commission Website Info on Criminal History

[www.ussc.gov](http://www.ussc.gov)

- Training icon, with drop-downs including
  - Primers
    - Criminal History Primer
  - Online Learning Center
    - Video - Advanced Guideline Issues: Criminal History
  - Annual National Seminar
    - Includes the Agenda & Seminar Materials for each year from 2009
- Research and Publications icon, with drop-downs including
  - Topical Index of Publications, includes Browse by Subject
    - Criminal History



**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

- 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

Measures the seriousness of a defendant's prior record and the likelihood of recidivism

- ✓ “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

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

\* If otherwise countable

\*\* Exceptions may apply





# Length of Prior Sentences

## §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”

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?



# “Prior Sentence”

§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.)

### §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?





# 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>
2	≥60 days	<b>Within 10 yrs. of prior sentence imposition</b>
1 (max of 4)	All others**	<b>Within 10 yrs. of prior sentence imposition</b>

\* If otherwise countable

\*\* Exceptions may apply



# Criminal History Points

## Prior Offense Committed Before 18

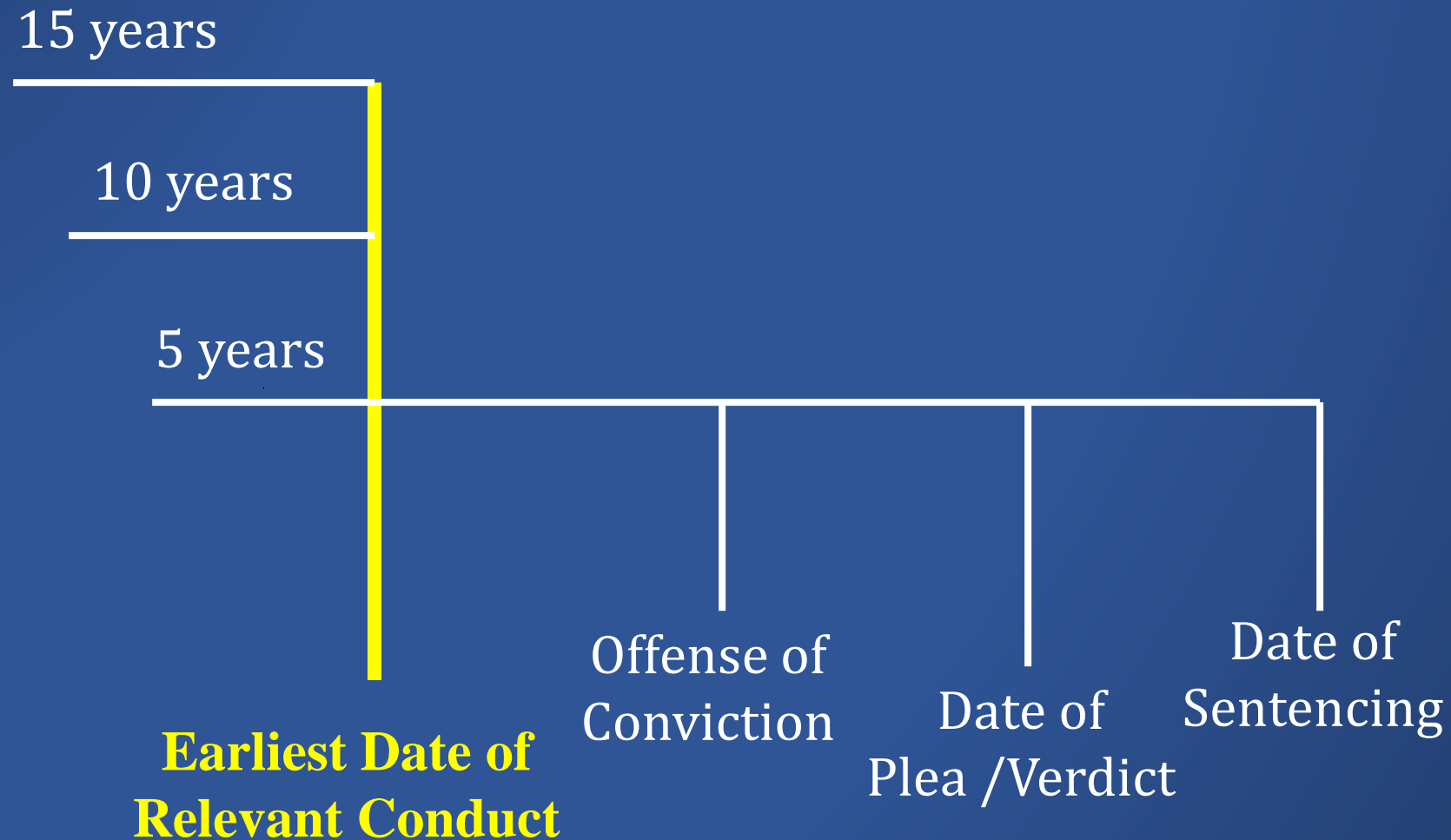
Points*	Sentence	Time Frame (Earliest Date of Relevant Conduct)
3	Only if convicted as an adult and >13 months	<b>Within 15 yrs. of prior sentence imposition or release</b>
2	≥ 60 days	<b>Within 5 yrs. of prior sentence imposition or release</b>
1 (max of 4)	All others**	<b>Within 5 yrs. of prior sentence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

\* If otherwise countable

\*\* Exceptions may apply



# The Interplay Between Criminal History Time Frames and Relevant Conduct



# Relevant Conduct and “Status”

## §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

§4A1.2(a)(2)



# Multiple Prior Sentences

## §4A1.2(a)(2)

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





# Threshold Determination: Intervening Arrest

§4A1.2(a)(2)

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



# Examples:

## Separated by Intervening Arrest

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”

§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

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

## §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”

## §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>	<b>5 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

## §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.)

### §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 each 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

- 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

§4A1.2(c)(1) & (c)(2)



# Excluded Offenses

## §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.)

## §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 one year)





# Other Considerations

- 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

- 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”

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



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# Chapter Three and Chapter Four “Overrides”

§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

- 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”

§4B1.1; Pursuant to Directive at 28 § 994(h)

- 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



**Statutory  
Maximum**

**Offense  
Level \***

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)**





# Criminal History Exercises

Detailed Analysis Available on the Seminar App  
and the Sentencing Commission Website



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# Exercise 1

- The defendant was previously sentenced in state court on January 4, 2011, to 2 years' imprisonment
- On April 4, 2011, the judge modified the sentence to time served (which at that time was 3 months), with the balance suspended upon service of 3 years' probation
- How many criminal history points are assigned?



## Exercise 2

- The defendant has a previous sentence of 3 years' probation with the condition of imprisonment of 60 days
- How many criminal history points are assigned?



## Exercise 3

- The defendant has a prior conviction for which she was sentenced to an indeterminate sentence of 1 to 5 years, for which she served 1 year
- How many criminal history points are assigned?



## Exercise 4

- The defendant pleaded guilty on July 1, 2015, to 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' jail
- Will the state DUI sentence be counted for criminal history? If so, how many criminal history points?



## Exercise 5

- The defendant has a previous state sentence of 90 days' imprisonment for drug distribution, for 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 sentence



## Exercise 5 (cont.)

- 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?



## Exercise 6

- The defendant pleaded guilty on June 1, 2015, to the instant federal offense of theft from interstate shipment, and is pending sentencing
- The instant federal offense was committed on January 1, 2014, which has also been established as the earliest date of relevant conduct
- Defendant has two prior state convictions (as follows). Will either be counted as a prior sentence? If so, how many criminal history points are assigned?



<b>Arrest Date</b>	<b>Conviction</b>	<b>Date/Action</b>
1/3/1996	Distribution of Cocaine	2/15/1997 - Sentenced to 5 years' imprisonment
		2/15/1998 - Paroled
		6/6/1998 - Parole revoked; imprisoned 18 months
		12/5/1999 - Released from custody





<b>Arrest Date</b>	<b>Conviction</b>	<b>Date/Action</b>
6/23/2002	Grand Larceny	12/10/2002 – Sentenced to 5 years' probation
		11/18/2006 - Probation revoked and sentenced to 3 years' imprisonment
		11/18/2007 - Released from custody



## Exercise 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?



## Exercise 8

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

Conviction	Sentence Date	Sentence	Points ?
(1) Larceny	12/1/14	\$500 fine	?
(2) Poss. Stolen Property	3/3/14	30 days' jail	?
(3) DUI	7/1/13	10 days' jail	?
(4) Theft	3/5/13	\$1,000 fine	?
(5) Auto Theft	9/7/12	5 yrs' probation	?
(6) Domestic Assault	1/8/12	45 days' jail	?
(7) Drug Distribution	1/5/11	45 days' jail	?



## Exercise 9

- The defendant's prior record includes convictions for three offenses of receiving stolen property
- Each offense was committed on a different date
- There was no arrest between the offenses
- Each of the offenses was subsequently charged in a separate indictment



## Exercise 9 (cont.)

- 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?



## Exercise 10

- The defendant's prior record includes convictions for two robberies
- The second was 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



## Exercise 10 (cont.)

- 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)?





# Thank You!



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