

# ADVANCED CRIMINAL HISTORY EXERCISES

## POP QUIZ

1. Defendant was given a civil law violation ticket for possession of less than 10 Grams of Marijuana. Is this a conviction that results in criminal history points?

No – we are only scoring criminal convictions, and in this case, the ticket was a civil law violation and therefore, not countable.

2.

Arrest Date	Charge/Docket #	Date/Sent. Imposed
2/07/05	Sale of Heroin, Montgomery County District Ct. Dayton, OH	04/07/05: 2 years imprisonment
02/07/07	Trafficking Cocaine, Montgomery County District Ct. Dayton, OH	04/07/07: 4 years imprisonment

Defendant pled guilty to a drug conspiracy that occurred from 2009 through 2015. Defendant has two prior state convictions for drug trafficking for which he was sentenced prior to the instant offense of conviction. Are these scored for criminal history purposes?

Yes – pursuant to §1B1.3, App. Note 5(C), “Conduct Associated with a Prior Sentence.—For the purposes of subsection (a)(2), offense conduct associated with a sentence that was imposed prior to the acts or omissions constituting the instant federal offense (the offense of conviction) is not considered as part of the same course of conduct or common scheme or plan as the offense of conviction.” In other words, the prior convictions are not relevant conduct to the instant offense and thus, will result in the scoring of criminal history points.

3. Defendant was sentenced to 20 years in prison in 2000. He was pardoned in 2012 and completed his term of supervised release in 2015. He was arrested and convicted for drug trafficking in 2017. Does the pardoned conviction count for criminal history purposes?

Yes – pursuant to §4A1.2, App. Note 10, “ Convictions Set Aside or Defendant Pardoned.—A number of jurisdictions have procedures pursuant to which previous convictions may be set aside or the defendant may be pardoned for reasons unrelated to innocence or errors of law, e.g., in order to restore civil rights or to remove the stigma associated with a criminal conviction. Sentences resulting from such convictions are to be counted. However, expunged convictions are not counted. §4A1.2(j).

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4.

Arrest Date	Charge/Docket #	Date/Sent. Imposed
11/24/2007	Ct. 1: Theft (Misd.); Ct. 2: DWI (Felony) Rutherford County Criminal Court Murfreesboro, TN	06/26/09: Ct. 1: 1 year jail Ct. 2: 60 days jail, to be served consecutive to one another

How many criminal history points?

3 points – pursuant to §4A1.1(a), if the sentence exceeds one year and one month, it is 3 points. The sentences were imposed consecutive to one another and it does not matter whether they are a misdemeanors or felonies, the sentence will still be aggregated.

5.

<u>Arrest Date</u>	<u>Charge/Docket #</u>	<u>Date/Sent. Imposed</u>
02/07/03 (Age 18)	Burglary, Montgomery County District Ct. Dayton, OH, Case#2003-CR- 411	04/07/03: 4 to 15 yrs. imprisonment consecutive to Case#2003-CR-805
02/07/03 (Age 18)	Burglary, Montgomery County District Ct. Dayton, OH, Case#2003-CR- 805	04/07/03: 4 to 15 yrs. imprisonment consecutive to Case# 2003-CR-411

Are these sentences scored separately or as a single sentence?

Single sentence. There is no intervening arrest between the offenses (the threshold question) and the sentences were imposed on the same day. (It is unclear whether the different case numbers mean that the offenses were not contained in the same indictment (“charging instrument”), but with the same date of sentencing that does not matter.) (See 4A1.2(a)(2).)

The length of an indeterminate sentence of 4 to 15 years is the stated maximum of 15 years. (See 4A1.2, App. Note 2.). The sentence of 15 years of imprisonment concurrently on each sentence results in this being treated as a single sentence of 15 years. (See 4A1.2(a)(2).)

How many criminal history points?

3 points under §4A1.1(a). Burglary is not a crime of violence (see §4B1.2(a) & App. Note 4), so the fact that one of the burglaries did not contribute to the criminal history points does not lead to an additional criminal history point under §4A1.1(e).

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6.

<u>Arrest Date*</u>	<u>Charge/Docket #</u>	<u>Date/Sent. Imposed</u>
01/19/10 (Age 24)	Felon in possession of firearm, Miami FL, U.S. District Ct. (SD/FL)	08/20/10: 14 months BOP custody, 2 yrs. SR
11/25/11 (Age 24)	Felon in possession of firearm, Miami Dade County District Court, Miami Florida	01/14/12: 6 months custody DOC
*Warrant issued by the state for attempted murder and possession of gun by felon on 12/20/09		

Are these sentences scored separately or as a single sentence?

Counted separately. While the available facts would suggest that there was not an intervening arrest between the offenses, the fact that the sentences were not charged in the same indictment (here one was federal and one was state) and were not sentenced on the same day precludes these sentences from being treated as a single sentence. (See §4A1.2(a)(2).)

How many criminal history points?

The 14-month sentence of imprisonment is 3 points under §4A1.1(a).

The 6-month sentence of imprisonment is 2 points under §4A1.1(b).

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7.

<u>Arrest Date</u>	<u>Charge/Docket #</u>	<u>Date/Sent. Imposed</u>
05/06/09 (Age 20)	Aggravated Robbery (Case# 09-432); Rutherford County Criminal Court, Murfreesboro, TN	06/26/09: 1 year custody, consecutive to Case# 09-433
05/06/09 (Age 20)	Aggravated Robbery (Case # 09-433); Rutherford County Criminal Court, Murfreesboro, TN	06/26/09: 9 months' custody, consecutive to Case# 09-432

Are these sentences counted separately or as a single sentence?

Single sentence. With the arrests on the same date it seems certain that there was no intervening arrest between the offenses, so the threshold requirement for a single sentence is met, and the sentences were imposed on the same day. (There is no information as to whether these offenses were charged in the same indictment (charging instrument), but with the sentences imposed on the same day, that does not matter.) (See §4A1.2(a)(2).)

The sentence of 1 year of imprisonment consecutively with 9 months of imprisonment results in this being treated as a single sentence of 1 year and 9 months. (See §4A1.2(a)(2).)

How many criminal history points?

3 points, as follows:

The single sentence of 1 year and 9 months is 3 points under 4A1.1(a).

Robbery is a crime of violence (see 4B1.2(a)(2)). However, in this case, each robbery contributed to the criminal history point total. Thus, the second robbery count will not result in 1 criminal history point under 4A1.1(e) (see 4A1.1, App. Note 5.).

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8.

<u>Arrest Date</u>	<u>Charge/Docket #</u>	<u>Date/Sent. Imposed</u>
12/05/11 (Age 21)	Consp. to commit possession of CDS (Cocaine) Second Judicial District Court Albuquerque, New Mexico	11/07/11: Guilty 2 years deferred adjudication, probation with drug treatment 09/06/12: probation revoked; guilty and resentenced to 180 days custody

How many criminal history points?

2 points under §4A1.1(b). The original sentence did not include any term of imprisonment. The 180 days' imprisonment imposed on the revocation results in the sentence being a 180-day sentence of imprisonment. (See §4A1.2(k)(1) & App. Note 11.)

9.

<u>Arrest Date</u>	<u>Charge/Docket #</u>	<u>Date/Sent. Imposed</u>
03/05/04 (Age 22)	21 U.S.C. § 952 and 960, Importation of Marijuana (felony) USBP (Calexico, CA) U.S. District Court (SD/CA)	06/28/04: 4 months BOP, 2 years SR 11/10/04: SR violation, warrant issued 05/29/05: SR revoked, 4 months BOP, 2 years SR reimposed

How many criminal history points?

No criminal history points. The original term of imprisonment of 4 months is added to the 4-month term of imprisonment imposed upon revocation to result in this being counted as if it were a single sentence of 8 months' imprisonment. While the earliest date of relevant conduct is not provided, if it is assumed that the original sentence was imposed more than 10 years prior to the instant federal offense, the sentence is outside the applicable time period to be counted. (See §4A1.2(k) & App. Note 11, and §4A1.2(e)(2) & App. Note 8.)

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10.

<u>Arrest Date</u>	<u>Charge/Docket #</u>	<u>Date/Sent. Imposed</u>
01/10/04 (Age 21)	Unlawful Sale, Manufacture or Delivery of a Controlled Substance Within 1000 feet of a place of worship Volusia Co. Cir. Ct. Deland, FL	06/09/04: 24 months' imprisonment suspended, 3 years' probation  05/17/05: Probation revoked, sentenced to FL DOC for 24 months

How many criminal history points?

3 points – pursuant to §4A1.2 §4A1.2(k) & App. Note 11. Although the initial sentence would have been too old to count, the revocation sentence was greater than one year and one month, so the time frame expanded to 15 years.

11. Defendant has a prior conviction for burglary. Eleven years ago, he received a sentence of 2 years' probation. Nine years ago, his probation was revoked and he received a sentence of one year in jail.

How many criminal history points?

No criminal history points. The original term of 2 years probation is added to the 1 year term of imprisonment imposed upon revocation to result in this being counted as it were a single sentence of 1 year imprisonment. It is noted that the original sentence was imposed 11 years prior to the instant federal offense, therefore the sentence is outside the applicable time period to be counted. (See §4A1.2(k) & App. Note 11, and §4A1.2(e)(2) & App. Note 8.)

12. Defendant has three prior convictions that are counted separately. For the first conviction, he was sentenced to 2 years' probation. On the second conviction, he received a sentence of 3 years' probation. On the third conviction, he was sentenced to a term of 2 years' probation. Due to the defendant's instant federal offense, his probation terms were revoked. The judge imposed 18 months' imprisonment for the revocation.

How many criminal history points?

5 points – In this case, each original sentence would have been scored separately as one point, for a total of 3 criminal history points. Pursuant to §4A1.2(k) & App. Note 11, the revocation sentence is added to the sentence that will result in the greatest increase in criminal history points. In this case, they are all the same, so it doesn't matter which one you add it to, but the 18 months will result in one of the prior sentences now receiving 3 criminal history points, while the other two will still receive one criminal history point, for a total of 5 points.

# ADVANCED CRIMINAL HISTORY EXERCISES

## Career Offender Exercise

- Count One: Possession with Intent to Distribute Heroin, 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(A)(i) – 10 years to life imprisonment
- Count Two: Possession of a Firearm in Furtherance of a Drug Trafficking Crime – 8 U.S.C. § 924(c)(1)(A)- 5 years to life imprisonment

### Count One: §2D1.1

**BOL: (10-30 KG Heroin) 34**

**OL: 34-3 for Acceptance = 31 (before application of Career Offender Override)**

### Count Two: §2K2.4

**Mandatory Consecutive 60 months**

### Step One

Do you have a count, other than the 18 U.S.C. § 924(c) count, that qualifies the defendant as a Career Offender?

**Yes, Count One, Possession with Intent to Distribute Heroin.**

If NOT: use the following table to determine your guideline:

#### §3E1.1 Reduction

No reduction  
2-level reduction  
3-level reduction

#### Guideline range for the 18 U.S.C. § 924(c) count

360-life  
292-365  
262-327

## ADVANCED CRIMINAL HISTORY EXERCISES

### STEP TWO

Determine the guideline range for the NON 924(c) count(s) of conviction. This is the “otherwise applicable guideline range”.

What is the defendant’s final offense level and corresponding “otherwise applicable guideline range”?

Because the drug count also qualifies the defendant as a Career Offender, the Career Offender table at §4B1.1(b)(1) is applied, which gives an Offense Level 37 for offenses with a statutory maximum of life (as is the case with the drug count), but because the defendant received a 3-level reduction for Acceptance of Responsibility, the Offense Level 37 is reduced to Offense Level 34. At Criminal History Category VI, the guideline range is 262-327.

### STEP THREE

Add the mandatory minimum required by the 924(c) count(s) to the minimum and maximum of the guideline range for the NON 924(c) count(s). (*i.e.* add the mandatory minimum to the minimum and maximum of the “otherwise applicable guideline range”.)

What is the resulting guideline range?

322-387 months. This results from the five-year mandatory minimum for the §924(c) count (60 months) being added to the minimum and maximum of the otherwise applicable guideline range of the drug offense (262-327).



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## STEP FOUR

Compare the minimums of the two ranges and choose the higher.

322-387

§3E1.1 Reduction

No reduction  
2-level reduction  
3-level reduction

Guideline range for the 18 U.S.C. § 924(c)  
count

360-life  
292-365  
262-327

What is the defendant's guideline range pursuant to §4B1.1?

322-387 months. The §924(c) mandatory minimum of 5 years (60 months) being added to the 262-month minimum of guideline range for the otherwise applicable guideline range for the drug career offender (322 months) is greater than the minimum of the Career Offender Table for §924(c) at §4B1.1(c)(3) (262 months).