

BASIC CRIMINAL HISTORY EXERCISES

Exercise #1 – Relevant Conduct or Criminal History?

Defendant's instant federal offense of conviction is a bank robbery that occurred on November 13, 2016, which is also established as the earliest date of relevant conduct

In the immediate flight from the robbery, Defendant stole a car to make his getaway

Defendant's prior record includes the following:

Exercise 1 – Relevant Conduct or Criminal History?

<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
11/13/16 (Age 23)	Auto Theft State Circuit Court	2/25/17: 2 years' imprisonment
<u>Arrest Date</u> 11/13/16		

This offense was committed by the defendant during his immediate flight from the bank robbery that is the basis for the instant federal offense of conviction

Is the auto theft relevant conduct, criminal history, or both, or neither?

Relevant conduct, and not criminal history – So no criminal history points.

The relevant conduct for the instant federal offense of conviction of bank robbery includes the conduct of Defendant stealing a car in the getaway: Defendant committed the act of stealing the car (§1B1.3(a)(1)(A) – the “Who” component of relevant conduct) in the course of attempting to avoid detection or responsibility for the offense of bank robbery (§1B1.3(a)(1) – the “When” component of relevant conduct).

Unless directed otherwise, “prior sentence” means a sentence previously imposed for conduct not part of the instant offense. See §4A1.2(a)(1) and App. Note 1: “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).”

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Exercise #2 – Relevant Conduct or Criminal History?

Defendant's instant federal offense of conviction is distribution of cocaine on November 13, 2016

It is established that Defendant's relevant conduct includes a course of conduct including all his cocaine distributions dating back to August 1, 2016

Defendant's prior record includes the following:

Exercise 2 – Relevant Conduct or Criminal History?

<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
9/13/16 (Age 28)	Sale of Cocaine State Court	1/10/17: 3 years' imprisonment
<u>Arrest Date</u> 12/1/16		
This offense conduct has been determined to be an act by the defendant in the same course of conduct of the defendant's instant federal offense of conviction for sale of cocaine		

Is the state cocaine sale relevant conduct, criminal history, or both, or neither?

Relevant conduct, and not criminal history – So no criminal history points.

The instant federal offense of conviction is a drug distribution for which the applicable Chapter Two offense guideline is §2D1.1. Because that guideline is on the "included" list at §3D12(d), the relevant conduct in the application of the §2D1.1 guideline includes acts in the same course of conduct or common scheme or plan as the offense of conviction. See §1B1.3(a)(2) – an expansion of the "When" component of relevant conduct.

It has been determined that the state drug sale was an act committed by Defendant (§1B1.3(a)(1)(A) – the "Who" component of relevant conduct), and that the act was part of the same course of conduct or common scheme or plan as the instant federal offense of conviction

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(§1B1.3(a)(2) – the “When” component of relevant conduct). In other words, it is relevant conduct.

Unless directed otherwise, “prior sentence” means a sentence previously imposed for conduct not part of the instant offense. See §4A1.2(a)(1)), which is further explained at App. Note 1: “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 that relevant conduct directs that if the prior sentence had been imposed prior to Defendant’s commission of the instant federal offense of conviction, the offense conduct associated with that sentence would not be considered as part of the same course of conduct or common scheme or plan as the instant federal offense of conviction. See §1B1.3, Application Note 5 (C). Had that been the case in this scenario, it would not be relevant conduct, and would have been counted as criminal history, assuming that the prior sentence otherwise met the other rules at §§4A1.1 and 4A1.2 for being counted under criminal history.

Exercise #3 – Relevant Conduct or Criminal History?

Defendant’s instant federal offense of conviction is felon in possession of a firearm

In the application of §2K2.1 (Felon in Possession), Defendant is being given the increased base offense level (BOL 20 instead of BOL 14) based on the following prior felony conviction that Defendant sustained for a controlled substance offense:

Exercise 3 – Relevant Conduct or Criminal History?

<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
1/15/12 (Age 34)	Drug Distribution State District Court	11/15/12: 36 months’ custody
<u>Arrest Date</u> 4/20/12		

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Is the state drug distribution relevant conduct, criminal history, or both, or neither?

It is both relevant conduct and criminal history, and will result in an increased base offense level of 20 at §2K2.1(a)(4)(A), and 3 criminal history points for the prior sentence under §4A1.1(a).

The applicable Chapter Two offense guideline for the instant federal offense of conviction of felon in possession of a firearm (18 USC § 922(g)) is §2K2.1. §2K2.1(a)(4)(A) gives an increased base offense level, BOL 20, for committing any part of the instant federal offense subsequent to sustaining one felony conviction of a controlled substance offense. Pursuant to §2K2.1, App. Note 10, for the prior conviction to be used for the increased base offense level at §2K2.1(a)(4)(A), it must be counted under criminal history – And, it will also be counted in the determination of criminal history points.

Because the prior 36-month sentence meets all the criminal history rules for being counted, the increased base offense level will be applied, thus making it relevant conduct under §1B1.3(a)(4). And 3 criminal history points will be added under §4A1.1(a), also making it criminal history.

Exercise #4 – Length of Prior Sentence

Sentence of 3 years' imprisonment, suspended to 6 months' imprisonment & 4 years' probation to follow

What is the maximum sentence imposed?

The maximum sentence imposed is 6 months' imprisonment – 2 criminal history points (§4A1.1(b)).

The sentence of imprisonment includes only the portion that was not suspended, 6 months. See §4A1.2(b)(2).

Exercise #5 – Length of Prior Sentence

Sentence of "time served"

At the time of sentencing, the defendant had been in pretrial custody for 5 months

What is the maximum sentence imposed?

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The maximum sentence imposed is 5 months' imprisonment – 2 criminal history points (§4A1.1(b)).

The length of sentence of imprisonment is the stated maximum (§4A1.2(b)(1) & App. Note 2), which in this case is the length of time the defendant is determined to have been in pretrial custody.

Exercise #6 – Length of Prior Sentence

Sentence of 3 years' probation

At the time of sentencing the defendant had been in pretrial custody for 5 months

What is the maximum sentence imposed?

The maximum sentence imposed is 3 years' probation – 1 criminal history point (§4A1.1(c)).

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. See §4A1.2, App. Note 2. There was no such condition imposed in this sentence.

Exercise #7 – Length of Prior Sentence

Sentence of 18 months' imprisonment

This sentence was subsequently reduced by the judge to 90 days' imprisonment

What is the maximum sentence imposed?

The maximum sentence imposed is 90 days' imprisonment – 2 criminal history point (§4A1.1(b)).

If part of a sentence of imprisonment was suspended, "sentence of imprisonment" refers only to the portion that was not suspended. See §4A1.2(b)(2). While the suspension did not occur at the time of the initial sentencing, this was nonetheless a sentence of 18 months' imprisonment suspended to 90 days' imprisonment.

Exercise #8 – Length of Prior Sentence

Sentence of 3 to 5 years' imprisonment

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What is the maximum sentence imposed?

The term “sentence of imprisonment” means a sentence of incarceration and refers to the maximum sentence imposed. See §4A1.2(b)(1). In the case of an indeterminate sentence of three to five years, the stated maximum is five years. See §4A1.2, App. Note 2.

Exercise #9 – Applicable Time Frame

Defendant’s instant federal offense of conviction, theft from an interstate shipment, occurred on November 1, 2016

Defendant’s earliest date of relevant conduct is January 11, 2015

Defendant’s prior record includes the following:

Exercise 9 – Applicable Time Frame		
<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
7/4/05 (Age 23)	Assault State Criminal Court	9/1/05: 90 days’ jail
<u>Arrest Date</u> 7/4/05		

Does this prior fall within the applicable time frame?

Yes, therefore 2 criminal history points are added (§4A1.1((b))).

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The applicable time period is that the sentence was imposed within ten years of the defendant's commencement of the instant offense (*i.e.*, within 10 years of the earliest date of relevant conduct). See §4A1.2(e)(2) & App. Note 8.

The earliest date of Defendant's relevant conduct is January 11, 2015, therefore the applicable time period began on January 11, 2005. Because the sentence was imposed on September 1, 2005, it falls within the applicable time frame.

Exercise #10 – Applicable Time Frame

Defendant's instant federal offense of conviction is a bank robbery that occurred on March 1, 2017, which is also established as the earliest date of relevant conduct

Defendant's prior record includes the following:

Exercise 10 – Applicable Time Frame

<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
11/25/00 (Age 22)	Burglary State Criminal Court	2/20/01: 5 years' imprisonment
<u>Arrest Date</u> 12/20/00		4/20/03: Paroled

Does this prior fall within the applicable time frame?

Yes, therefore 3 criminal history points are added (§4A1.1(a)).

The prior sentence of 5 years' imprisonment resulted from an offense committed by the defendant at age 18 or older. Therefore, the applicable time period for a sentence greater than a year and a month (13 months) is that the sentence was imposed within 15 years of the defendant's commencement of the instant offense (*i.e.*, within 15 years of the earliest date of

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relevant conduct) or that it resulted in the defendant being incarcerated during any part of the 15-year period. See §4A1.2(e)(1) & App. Note 8.

The earliest date of Defendant's relevant conduct is March 1, 2017, therefore the applicable time period began on March 1, 2002. While the date that the prior sentence was imposed, February 20, 2001, was not within the applicable time period, Defendant was not paroled until April 20, 2003, so Defendant was incarcerated on that sentence at a point during the applicable time period.

Exercise #11 – Applicable Time Frame

Defendant's instant federal conviction is for a drug sale on January 1, 2016

It is established that defendant's earliest date of relevant conduct was a drug sale in the same course of conduct on January 1, 2010

Defendant's prior record includes the following:

Exercise 11 – Applicable Time Frame

<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
7/13/93 (Age 23)	Aggravated Assault State District Court	1/25/94: 6 years' custody department of corrections
<u>Arrest Date</u> 7/13/93		7/24/96: Paroled

Does this prior fall within the applicable time frame?

Yes, therefore 3 criminal history points are added (§4A1.1((a))).

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The prior sentence of 6 years' imprisonment resulted from an offense committed by the defendant at age 18 or older. Therefore, the applicable time period for a sentence greater than a year and a month (13 months) is that the prior sentence was imposed within 15 years of the defendant's commencement of the instant offense (*i.e.*, within 15 years of the earliest date of relevant conduct) or that it resulted in the defendant being incarcerated during any part of the 15-year period. See §4A1.2(e)(1) & App. Note 8.

While Defendant's date of the instant federal offense of conviction is January 1, 2016, the earliest date of Defendant's relevant conduct is January 1, 2010, therefore the applicable time period began on January 1, 1995. Although the date that the prior sentence was imposed, January 25, 1994, is not within the applicable time period, Defendant was not paroled until July 24, 1996, so Defendant was incarcerated on that sentence at a point during the applicable time period.

Exercise #12 – Applicable Time Frame

Defendant's instant federal offense of conviction, Interstate Transportation of a Stolen Motor Vehicle, occurred on December 1, 2015

Defendant's earliest date of relevant conduct is June 1, 2015

Defendant's prior record includes the following:

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Exercise 12 – Applicable Time Frame

<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
4/4/16 (Age 32)	Misdemeanor Domestic Violence County Court	7/1/16: \$500 fine and domestic violence program
<u>Arrest Date</u>		
4/4/16		

Does this prior fall within the applicable time frame?

Yes, therefore 1 criminal history point is added (§4A1.1((c)).

The prior sentence of a \$500 fine and domestic violence programming resulted from an offense committed by the defendant at age 18 or older. Therefore, the applicable time period for a prior sentence that is less than 60 days of imprisonment (which would include a sentence that is a fine with no incarceration) is that the prior sentence was imposed within 10 years of the defendant's commencement of the instant federal offense (*i.e.*, within ten years of the earliest date of relevant conduct). See §4A1.2(e)(2) & App. Note 8.

While Defendant's date of the instant federal offense of conviction is December 1, 2015, the earliest date of relevant conduct is June 1, 2015. Therefore, the applicable time period began ten years earlier, on June 1, 2005. The date that the prior sentence was imposed is July 1, 2016, which is within the time period.

Note that in this case both the date the prior offense was committed (April 4, 2016) and the date for which it was sentenced (July 1, 2016) are both after the date the Defendant's instant federal offense of conviction was committed, and after any of the relevant conduct. That does not affect the criminal history determination however. As defined at §4A1.2(a)(1), "[T]he term 'prior sentence' means any sentence previously imposed ... for conduct not part of the instant offense." Previously imposed includes any prior sentence imposed all the way up to the sentencing in the instant federal case, if that prior sentence is otherwise countable.

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Exercise #13 – Applicable Time Frame

Defendant's instant federal conviction is a fraud conspiracy from January 1, 2010 to December 31, 2015

Defendant joined the conspiracy July 1, 2014, which is also established as the defendant's earliest date of relevant conduct

Defendant's prior record includes the following:

Exercise 13 – Applicable Time Frame

<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
1/13/02 (Age 26)	Receipt of Stolen Interstate Shipment U.S. District Court	2/2/03: 3 years' probation
<u>Arrest Date</u> 3/15/02		2/1/06: Probation expired

Does this prior fall within the applicable time frame?

No, it is not within the specified time period, and therefore no criminal history point is added. See §4A1.2(e)(3).

The prior sentence for receipt of stolen interstate shipment resulted from an offense committed by the defendant at age 18 or older. Therefore, the applicable time period for a prior sentence that is less than 60 days of imprisonment (which would include a sentence of probation (see §4A1.2(a)(2) & App. Note 2 (last sentence)) is that the prior sentence was imposed within 10 years of the defendant's commencement of the instant federal offense (i.e., within ten years of the earliest date of relevant conduct). See §4A1.2(e)(2) & App. Note 8.

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While the dates of the instant conspiracy for which Defendant is convicted are from January 1, 2010 to December 31, 2015, Defendant did not join the conspiracy until July 1, 2014, which is the Defendant's earliest date of relevant conduct. See §1B1.3, App. Note 3(B) (third paragraph). Therefore, the applicable time period began ten years earlier, on July 1, 2004. The date that the prior sentence was imposed is February 2, 2003, which is prior to the applicable time period. So that prior sentence is not counted.

Note that in this case Defendant's period of probation continued until February 1, 2006, but that has no impact on the date the sentence was imposed.

Exercise #14 – Excluded Misdemeanor and Petty Offense Sentences

Exercise 14 – Excluded Misdemeanor & Petty Offenses

<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
8/10/12 (Age 25)	Unlicensed Driver Municipal Court	12/22/12: \$250 fine
<u>Arrest Date</u> 8/10/12		

How many criminal history points?

No criminal history points due to the sentence imposed for this offense. See §4A1.2(c)(1).

This misdemeanor offense of conviction, unlicensed driver, is one which is only counted if the sentence was a term of probation of more than one year, or a term of imprisonment of at least 30 days, or this prior offense is similar to the instant federal offense.

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Exercise #15 – Excluded Misdemeanor and Petty Offense Sentences

Exercise 15 – Excluded Misdemeanor & Petty Offenses

<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
11/21/13 (Age 21)	Driving While Intoxicated (misdemeanor)	07/20/14: 3 days' jail and \$500 fine
<u>Arrest Date</u> 11/21/13	County Criminal Court	

How many criminal history points?

One criminal history point (§4A1.1(c)).

§4A1.2, App. Note 5 directs that 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 (*e.g.*, felony, misdemeanor, petty offense). And the guidelines for “excluded” misdemeanors and petty offenses, at §4A1.2(c)(1) and (c)(2) do not apply to these offenses.

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Exercise #16 – “Status”

Defendant’s instant federal offense of conviction is a bank robbery that occurred on November 13, 2016, which is also established as the earliest date of relevant conduct

Defendant’s prior record includes the following:

Exercise 16 – “Status”

<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
10/18/13 (Age 27)	Possession with Intent to Distribute Heroin	2/21/14: 5 years’ imprisonment
<u>Arrest Date</u> 10/18/13	State Criminal Court	2/20/16: Paroled

Defendant was on active supervision of this state parole when he committed the instant federal offense; State parole authorities are awaiting the disposition of the instant federal case before taking action

Do criminal history points for “status” apply?

Yes, 2 criminal history points apply for “status” (§4A1.1(d)).

The threshold determination as to whether “status” applies, is whether the prior sentence which resulted in the “status” is counted. See §4A1.1, App. Note 4. The prior sentence of 5 years’ imprisonment resulted from an offense committed by the defendant at age 18 or older. Therefore, the applicable time period for a sentence greater than 13 months is that the sentence was imposed within 15 years of the defendant’s commencement of the instant federal offense (*i.e.*, within 15 years of the earliest date of relevant conduct) or that it resulted in the defendant being incarcerated during any part of the 15-year period. See §4A1.2(e)(1) & App. Note 8.

The earliest date of Defendant’s relevant conduct in the instant federal offense is November 13, 2016, therefore the applicable time period begins on November 13, 2001. The date that the prior sentence was imposed, February 21, 2014, is within the applicable time period, so that prior sentence will be counted and 3 criminal history points added (§4A1.1(a)).

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Defendant was paroled on February 20, 2016, from this countable prior sentence, and was under parole, which is a “criminal justice sentence,” when Defendant committed the instant federal offense. See §4A1.1(d) & App. Note 4.

Note that although Defendant was under active parole supervision, that is not required for “status.” It is only required that the criminal justice sentence have a custodial or supervisory component; active supervision is not required for “status.”

Exercise #17 – “Status”

Defendant’s instant federal offense of conviction is a drug sale that occurred on January 1, 2016

It is established that defendant’s earliest date of relevant conduct was a drug sale in the same course of conduct on January 1, 2010, and that the relevant conduct continued until January 1, 2016

Defendant’s prior record includes the following:

Exercise 17 – “Status”

<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
2/11/13 (Age 26)	DUI 2 nd Offense State Court	5/25/13: \$1000 fine & 6 months’ probation
<u>Arrest Date</u> 2/11/13		11/24/13: Probation expired

Do criminal history points for “status” apply?

Yes, 2 criminal history points apply for “status” (§4A1.1(d)).

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The threshold determination as to whether “status” applies, is whether the prior sentence which resulted in the “status” is counted. See §4A1.1, App. Note 4. The prior sentence of \$1,000 fine & 6 months’ probation resulted from an offense committed by the defendant at age 18 or older. Therefore, the applicable time period for a sentence of less than 60 days’ is that the sentence was imposed within 10 years of the defendant’s commencement of the instant federal offense (meaning the earliest date of relevant conduct), or January 1, 2010 in this case. See §4A1.2(e)(2) & App. Note 8.

Defendant was on the state probation from May 25, 2013 until November 24, 2013, and therefore was under this “criminal justice sentence” during part of the period of Defendant’s relevant conduct (January 1, 2010 to January 1, 2016). See §4A1.1(d) & App. Note 4.