

CRIMINAL HISTORY SCENARIOS

Wilmington, OH

October 25, 2019

Scenario #1

Defendant was convicted of a conspiracy to distribute crack cocaine. The conspiracy began on December 1, 2013 and ended on April 1, 2014 at which time the defendant was arrested. The Indictment lists three separate deliveries made from New York and Washington, DC.

- December 28, 2013 – 50 grams
- February 9, 2014 – 50 grams
- March 2, 2014 – 50 grams

The Indictment also cites 20 grams crack delivery from New York to Philadelphia on October 10, 2013. The defendant was convicted for this conduct in Philadelphia on November 17, 2013 and sentenced to one month in jail. For what amount of drugs would the guidelines hold the defendant accountable?

- A. 50 grams
- B. 150 grams
- C. 170 grams

Scenario #2

Defendant is convicted of Theft of Mail, a violation of 18 U.S.C. § 1708. The defendant, a mail carrier, stole several bags of mail from his mail truck. When police contacted the defendant regarding the mail theft, he fled from officers. The defendant was charged and convicted by the state for fleeing officers and false statements to police officers. As a result, the defendant is currently serving a 6-month sentence in county jail.

The court applied §2B1.1 for the theft of mail. The court did not apply an enhancement for obstruction at §3C1.1. Application note 5(B) and (D) indicates that fleeing arrest and false statements to law enforcement are examples of conduct ordinarily not covered.

Since §3C1.1 is not applicable, should this prior conviction receive criminal history points?

- A. Yes
- B. No

CRIMINAL HISTORY SCENARIOS, Cont.

Scenario #3

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

#3-A. Are these sentences scored separately or as a single sentence?

- A. Separately
- B. Single

#3-B. How many criminal history points?

- A. None
- B. 1
- C. 2
- D. 3
- E. 4

CRIMINAL HISTORY SCENARIOS, Cont.

Scenario #4

<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

#4-A. Are these sentences counted separately or as a single sentence?

- A. Separately
- B. Single

#4-B. How many criminal history points?

- A. None
- B. 1
- C. 2
- D. 3
- E. 4

Scenario #5

<u>Arrest Date</u>	<u>Charge/Docket #</u>	<u>Date/Sent. Imposed</u>
11/07/11 (Age 21)	Consp. to commit possession of CDS (Cocaine) Second Judicial District Court Albuquerque, New Mexico	12/05/11: 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?

- A. None
- B. 1
- C. 2
- D. 3
- E. 4

CRIMINAL HISTORY SCENARIOS, Cont.

Scenario #6

<u>Arrest Date</u>	<u>Charge/Docket #</u>	<u>Date/Sent. Imposed</u>
03/05/07 (Age 22)	Burglary-1 st Degree Charles County Circuit Court, La Plata. Maryland	06/28/07: 2 years' probation 04/10/09: probation violation, warrant issued 06/20/09: probation revoked; 12-month sentence imposed

How many criminal history points?

- A. None
- B. 1
- C. 2
- D. 3
- E. 4

Scenario #7

<u>Arrest Date</u>	<u>Charge/Docket #</u>	<u>Date/Sent. Imposed</u>
04/08/09 (Age 21)	Criminal Mischief 3rd Degree Polk County District Court, Des Moines, Iowa, Case #1234	05/15/09: 2 years' probation 2/4/11: probation revoked; 2-year sentence (concurrent with #1235, #1236)
1/03/10	Theft 3d Degree Polk County District Court, Des Moines, Iowa Case #1235	2/18/10: 2 years' probation 2/4/11: probation revoked; 2-year sentence (concurrent with #1234, #1236)
9/12/10	Carrying Concealed Weapon Polk County District Court, Des Moines, Iowa, Case #1236	10/20/10: 2 years' probation 2/4/11: probation revoked; 2-year sentence (concurrent with #1234, #1235)

How many criminal history points?

- A. 3
- B. 5
- C. 6
- D. 9

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Criminal History Calculations / USSG §4A1.1 & 4A1.2: 2018 Annual National Seminar

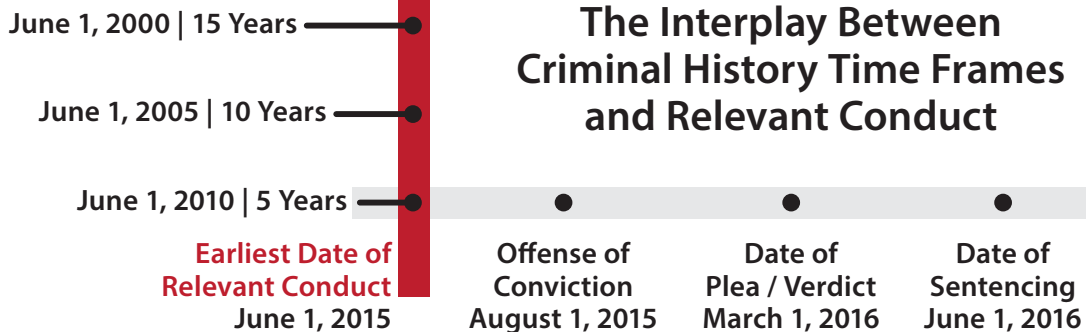
This handout is intended to be a quick reminder of some key considerations when applying the criminal history calculations at §4A1.1 and 4A1.2.

Criminal History Points for Prior Offenses Committed... ...at 18 or Older ...Before 18

Pts*	Sentence	(Earliest Date of Relevant Conduct) Time Frame	(Earliest Date of Relevant Conduct) Time Frame	Sentence	Pts*
3	> 13 Months	Within 15 years of prior sentence imposition or release	Within 15 years of prior sentence imposition or release	> 13 Months <i>Only If Convicted as an Adult and:</i>	3
2	≥ 60 Days	Within 10 years of prior sentence imposition	Within 5 years of prior sentence imposition or release	≥ 60 Days	2
1 (Max of 4)	All Others**	Within 10 years of prior sentence imposition	Within 5 years of prior sentence imposition	All Others**	1 (Max of 4)

* If Otherwise Countable
** Exceptions May Apply

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Other Considerations:

- §4A1.2(f) – Diversionary Dispositions
- §4A1.2(h) – Foreign Sentences
- §4A1.2(i) – Tribal Court Sentences
- §4A1.2(k) – Revocations of Probation, Parole, Mandatory Release, or Supervised Release

Multiple Prior Sentences / USSG §4A1.2(a)(2): 2018 Annual National Seminar

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Multiple Prior Sentences will be Treated as a “Single Sentence” if –

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

--- AND ---

2. The offenses **either**:
 - a. Were named in the same charging document, or
 - b. Resulted in sentences imposed on the same day

* For Single Sentences, if concurrent - use the longest sentence and if consecutive, aggregate the length of the sentences

Example 1

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

Example 2

1. The defendant’s prior record includes two robberies, the second committed after the defendant had been arrested for the first and was out on pretrial 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.
2. Intervening arrest
3. Separate sentences: 3 points each (total 6 points)

Career Offender “Override”

Criteria

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

Override

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

Career Offender Table

Statutory Maximum	Life ... 37 25 years + ... 34 20 years + ... 32 15 years + ... 29 10 years + ... 24 5 years + ... 17 More than 1 year ... 12	Offense Level *
		* Decrease by number of levels (0 or -2 or -3) at §3E1.1 (Acceptance of Responsibility)

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The United States Sentencing Commission, an independent agency in the judicial branch of the federal government, was organized in 1985 to develop a national sentencing policy for the federal courts. The resulting sentencing guidelines provide structure for the courts’ sentencing discretion to help ensure that similar offenders who commit similar offenses receive similar sentences.