

Criminal History

Chapter Four

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

- ✓ “Prior Sentences”
(1, 2, or 3 points each)
- ✓ “Status”
(2 points)

Criminal History Points

Prior Offense Committed at 18 or Older

Points*	Sentence	Time Frame (Earliest Date of Relevant Conduct)
3	>13 months	Within 15 yrs. of prior sentence imposition or release
2	≥60 days	Within 10 yrs. of prior sentence imposition
1	All others**	Within 10 yrs. of prior sentence imposition

(max of 4)

* 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	All others**	Within 5 yrs. of prior sentence imposition
(max of 4)		

* 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”

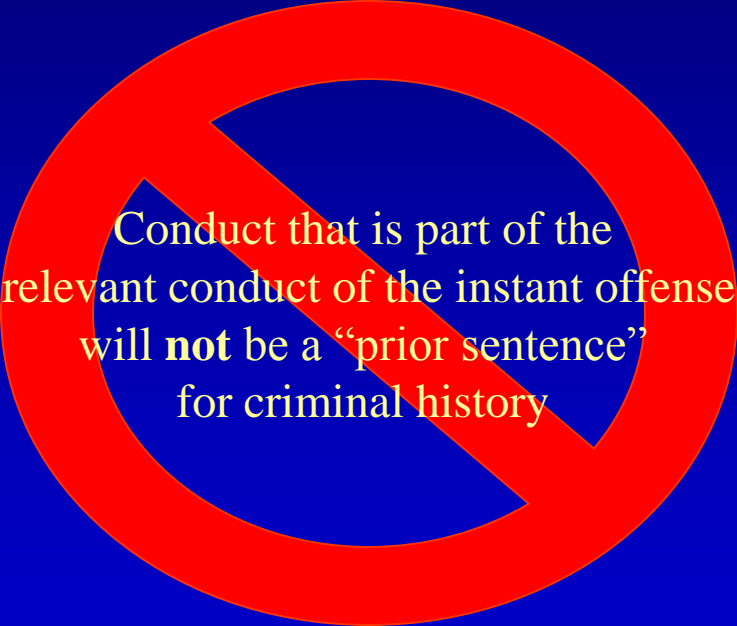
Some Considerations in Establishing a “Prior Sentence”

1. Is it part of relevant conduct?
2. Is it within the time frame?
3. Treatment of multiple prior sentences
 - Discussion will be during breakout session
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 direct that those considerations also be used in Criminal History, *e.g.*,

§2K2.1 (Felon in Possession), App. Note 12;

§2L1.2 (Illegal Reentry), App. Note 6

Is the Previous Sentence Within the Time Frame?

Criminal History Points

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(max of 4)

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Criminal History Points

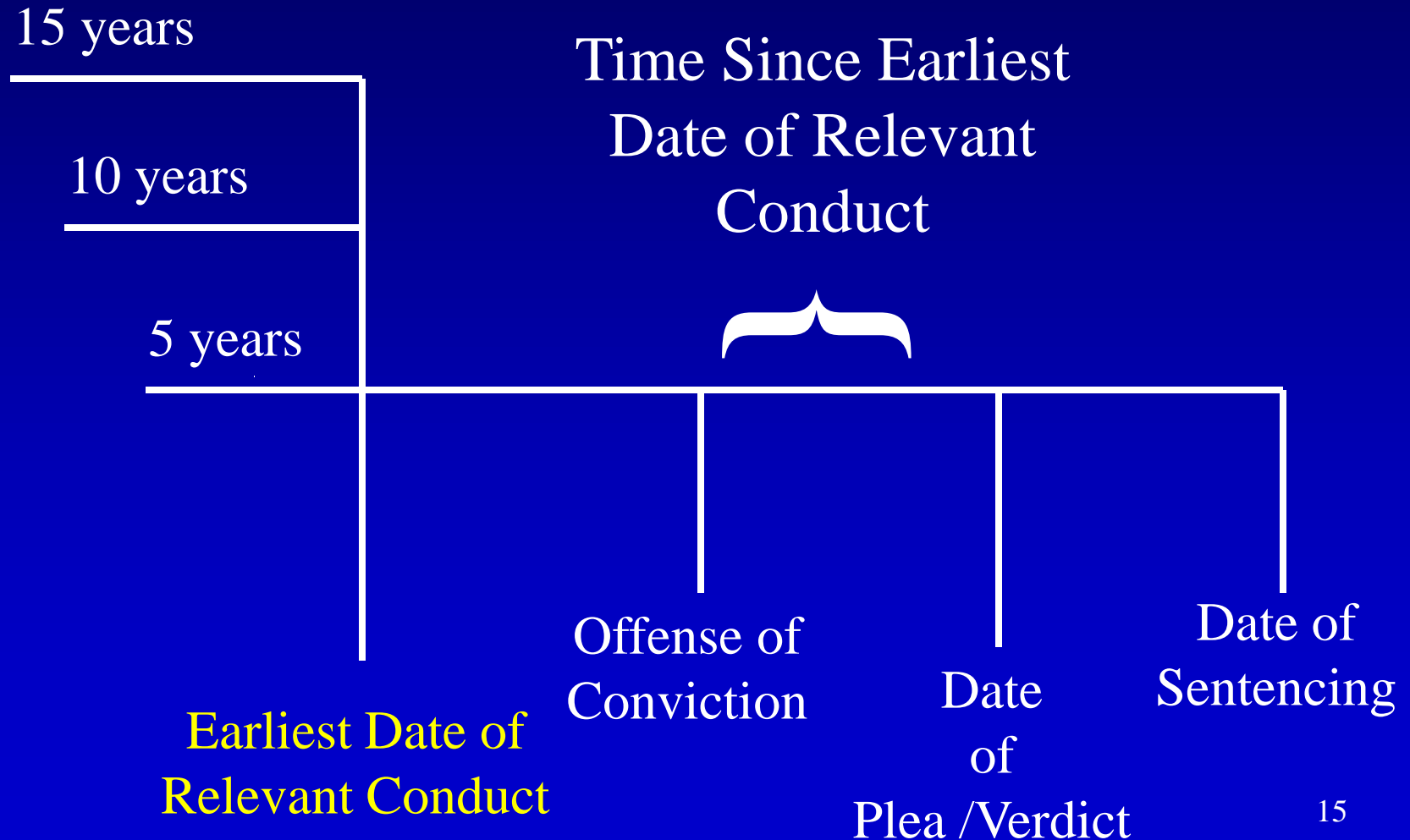
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1 (max of 4)	All others**	Within 5 yrs. of prior sentence imposition

* If otherwise countable

** Exceptions may apply

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** 20

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

Example:

Point Assignments and “Single” Sentences

<u>Length</u>	<u>Point Assignments</u>	
	<u>“Single Sentence”</u>	<u>Counted Separately</u>
1 mo.		1 pt.
4 mos. consec.	}	2 pts.
<u>9 mos. consec.</u>		<u>2 pts.</u>
14 mos.		3 pts.
		5 pts.

Example:

Point Assignments and “Single” Sentences

<u>Length</u>	<u>Point Assignments</u>	
	<u>“Single Sentence”</u>	<u>Counted Separately</u>
1 mo.		1 pt.
4 mos. concur.		2 pts.
<u>9 mos. concur.</u>		<u>2 pts.</u>
9 mos.	2 pts.	5 pts.

A “Single Sentence” That Includes Crimes of Violence

§4A1.1(e)

- When multiple prior sentences are treated as a “single sentence,” §4A1.1(f) 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:
 - Robbery of bank and assault of the teller
 - Five year sentence for each on same day
 - Single sentence: 3 points (§4A1.1(a))
 - 1 point added for crime of violence that did not receive points (§4A1.1(f))

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.*, trespassing

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 1 yr.)

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

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**