



Criminal History

Selected Issues

2023 National Seminar

August 30th, 2023

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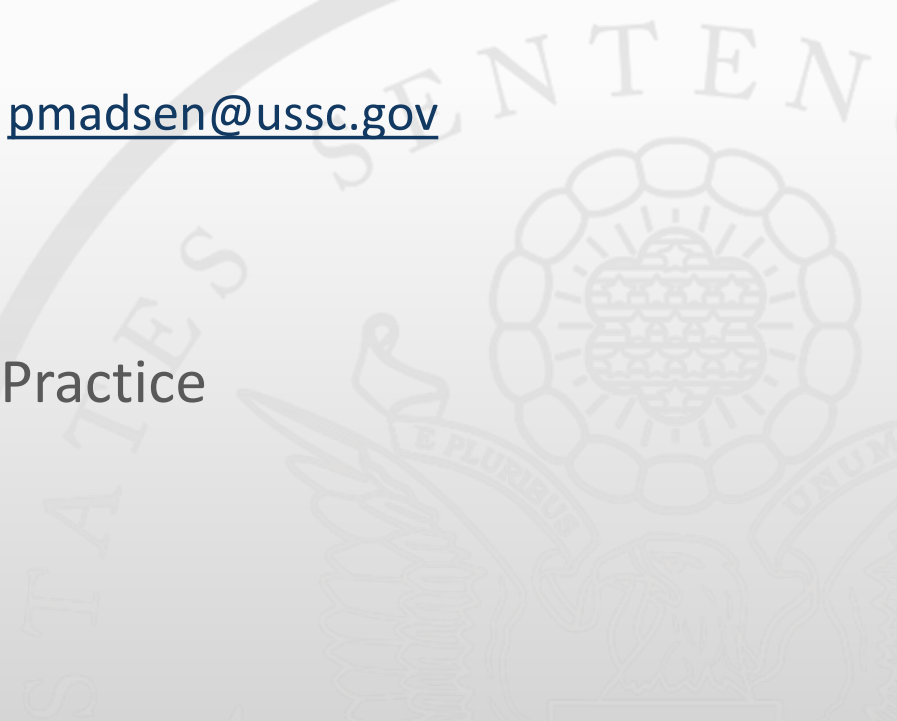
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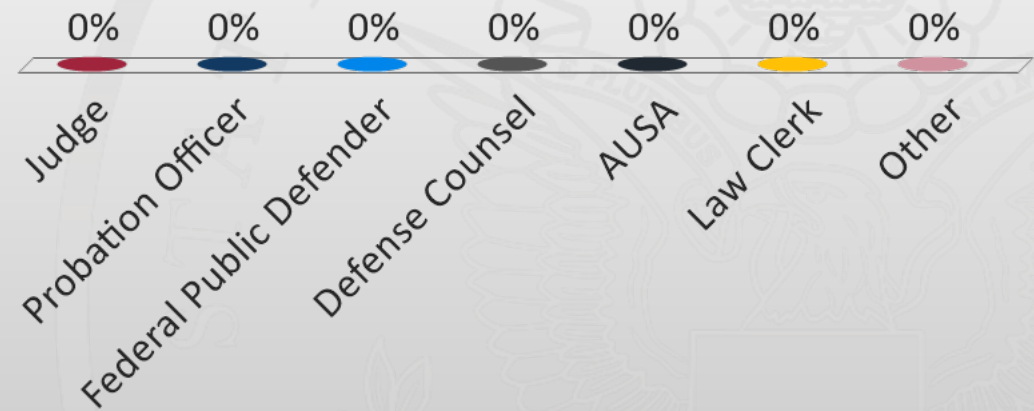
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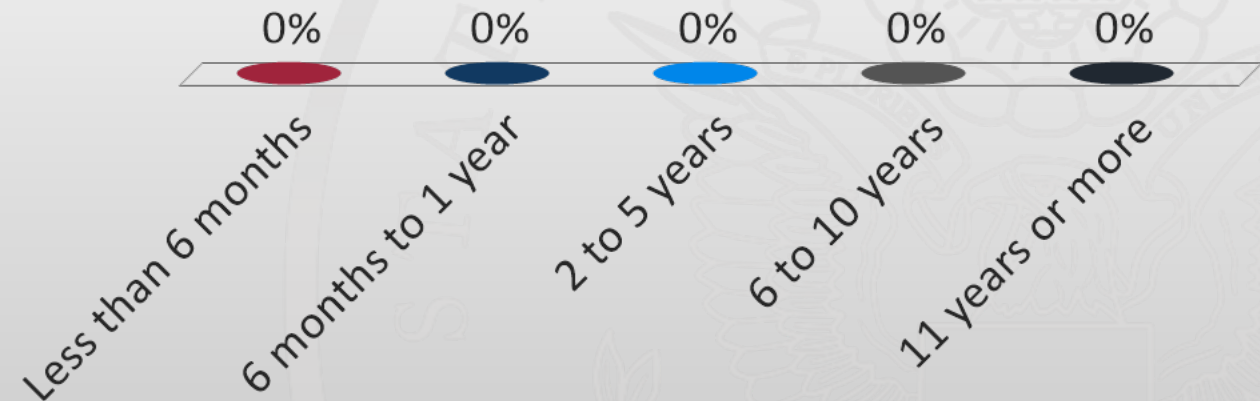
What is your current position?

- A. Judge
- B. Probation Officer
- C. Federal Public Defender
- D. Defense Counsel
- E. AUSA
- F. Law Clerk
- G. Other



How long have you been working in the field of federal sentencing?

- A. Less than 6 months
- B. 6 months to 1 year
- C. 2 to 5 years
- D. 6 to 10 years
- E. 11 years or more



Learning Objectives

By the end of today's session, your active engagement will empower you to:

Properly **assign** criminal history points to prior convictions;

Distinguish multiple prior sentences treated as a single sentence from those separately assigned criminal history points;

Determine when additional criminal history points apply to multiple prior sentences for crimes of violence treated as a single sentence;

Describe the impact of the criminal history revocation rules; and

Identify promulgated 2023 amendments impacting criminal history.

Chapter 4 – Criminal History

Introductory Commentary

PART A – CRIMINAL HISTORY

Introductory Commentary

The Comprehensive Crime Control Act sets forth four purposes of sentencing. (See 18 U.S.C. § 3553(a)(2).) A defendant's record of past criminal conduct is directly relevant to those purposes. A defendant with a record of prior criminal behavior is more culpable than a first offender and thus deserving of greater punishment. General deterrence of criminal conduct dictates that a clear message be sent to society that repeated criminal behavior will aggravate the need for punishment with each recurrence. To protect the public from further crimes of the particular defendant, the likelihood of recidivism and future criminal behavior must be considered. Repeated criminal behavior is an indicator of a limited likelihood of successful rehabilitation.

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

SENTENCING TABLE
(in months of imprisonment)

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	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
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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	0-6	0-6	0-6	0-6	0-6
7	0-6	0-6	0-6	0-6	0-6	0-6
8	0-6	0-6	0-6	0-6	0-6	0-6
9	0-6	0-6	0-6	0-6	0-6	0-6
10	0-6	0-6	0-6	0-6	0-6	0-6
11	0-6	0-6	0-6	0-6	0-6	0-6
12	0-6	0-6	0-6	0-6	0-6	0-6
13	0-6	0-6	0-6	0-6	0-6	0-6
14	0-6	0-6	0-6	0-6	0-6	0-6
15	0-6	0-6	0-6	0-6	0-6	0-6
16	0-6	0-6	0-6	0-6	0-6	0-6
17	0-6	0-6	0-6	0-6	0-6	0-6
18	0-6	0-6	0-6	0-6	0-6	0-6
19	0-6	0-6	0-6	0-6	0-6	0-6
20	0-6	0-6	0-6	0-6	0-6	0-6
21	0-6	0-6	0-6	0-6	0-6	0-6
22	0-6	0-6	0-6	0-6	0-6	0-6
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

Zone A

Prior Sentence

§4A1.2(a)(1) and Application Note 1 (pp. 382 & 387)

A sentence imposed **other than** a sentence for conduct that is part of the instant offense.

Conduct that is part of the relevant conduct of the instant offense **will not be** a “**prior sentence**” for criminal history.

Relevant Conduct vs. Criminal History

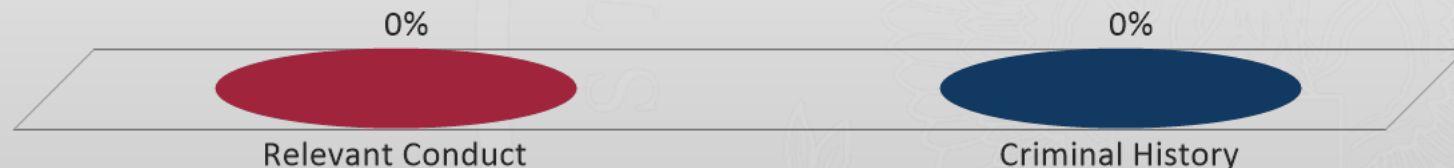
Bonnie Parker is charged with bank robbery on June 1, 2020. In the immediate flight from the robbery, Bonnie stole a car to make her getaway. She was convicted at the state level of auto theft.

Bonnie's prior record includes the following conviction:

<u>Arrest Date</u>	<u>Charge / Court</u>	<u>Date / Sentence Imposed</u>
06/01/2020 (Age 35)	Auto Theft / State Circuit Court	08/31/2020: Pled guilty; 6 months' imprisonment

This prior state offense is:

- ✓ A. Relevant Conduct
- B. Criminal History



§1B1.1 - APPLICATION INSTRUCTIONS

(a) The court shall determine the kinds of sentence and the guideline range as set forth in the guidelines (see 18 U.S.C. § 3553(a)(4)) by applying the provisions of this manual in the following order, except as specifically directed:

(1) Determine, pursuant to §1B1.2 (Applicable Guidelines), the offense guideline section from Chapter Two (Offense Conduct) applicable to the offense of conviction. See §1B1.2.

(2) Determine the base offense level and apply any appropriate specific offense characteristics, cross references, and special instructions contained in the particular guideline in Chapter Two in the order listed.

(6) Determine the defendant's criminal history category as specified in Part A of Chapter Four. Determine from Part B of Chapter Four any other applicable adjustments.



**Apply the manual
in order!**

Criminal History Review

§§4A1.1 and 4A1.2



Determining Criminal History Points

1

2

3

Prior Sentences – §4A1.1(a), (b), and (c)
1, 2, or 3 Points

2

“Status” – §4A1.1(d)*
2 Points

1

Crimes of Violence – §4A1.1(e)*
1 Point Each – Up to Three Points

Criminal History Points

Prior Offense Committed at age 18 or older

Guideline	Sentence	Points
§4A1.1(a)	>13 months	3
§4A1.1(b)	≥60 days	2
§4A1.1(c)	All other convictions	1 (Max of 4)

Length of Prior Sentence

§4A1.2(b) & Application Note 2 (pg. 387)

Set by the maximum sentence imposed

- If sentence or any portion is suspended, the maximum is established by the unsuspended portion

Unaffected by release

- *e.g.*, parole, good time credit



How many criminal history points will be assigned?

<u>Arrest Date</u>	<u>Charge/Court</u>	<u>Date/Sent. Imposed</u>
07/13/2020 (Age 34)	Aggravated Assault; District Court, Richmond, VA	10/25/2020: Pled guilty, 36 months' imprisonment, 24 months suspended

- ✓ A. 3
- B. 2
- C. 1
- D. 0



Sentences Counted and Excluded

§4A1.2(c)(1)

Includes a list of misdemeanor and petty offenses that are only counted if:

- **Sentence was probation of more than one year**
- **Sentence was imprisonment of at least 30 days**
- **Prior offense was similar to an instant offense**

Careless/Reckless Driving

Disorderly Conduct

False Information to Police

Insufficient Funds Check

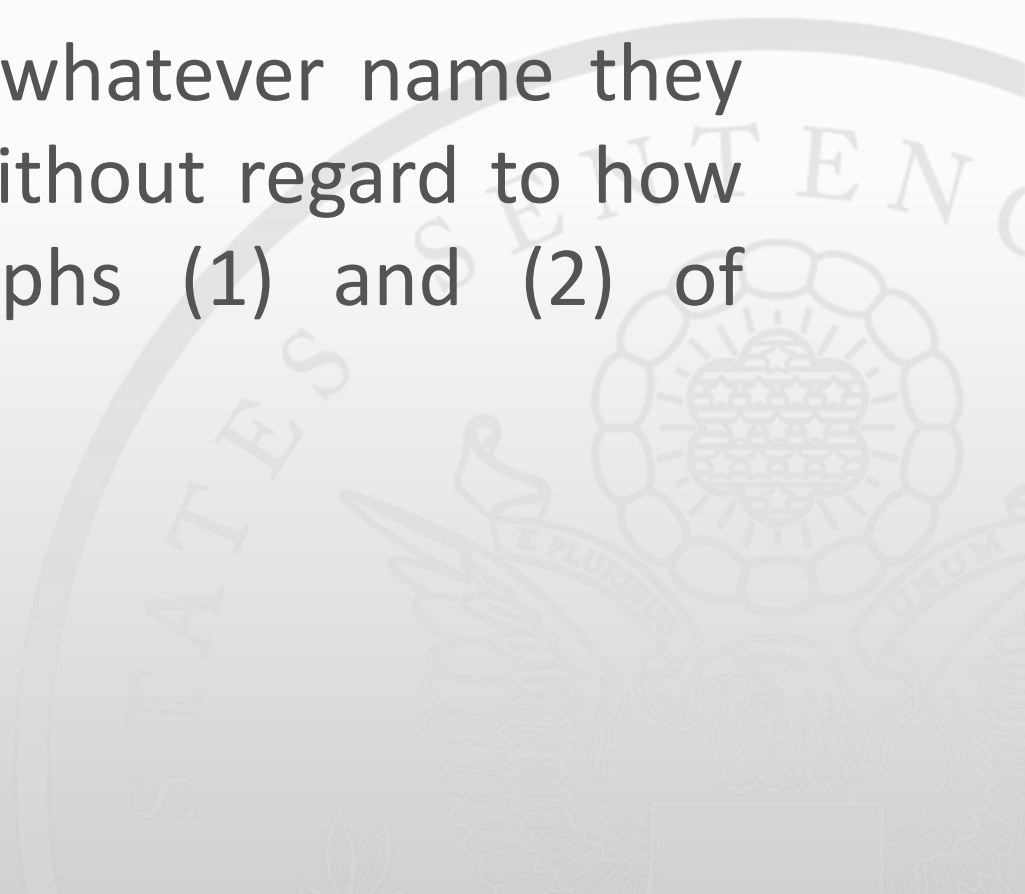
Driving Under Suspension

Trespassing

DUI - Always Counted

§4A1.2, Application Note 5 (pg. 388)

“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. Paragraphs (1) and (2) of §4A1.2(c) do not apply.”



Sentences Counted and Excluded

§4A1.2(c)(2)

Includes a list of misdemeanor and petty offenses that are *never* counted

Fish and Game Violations

Juvenile Status Offenses

Loitering

Minor Traffic Offenses

Public Intoxication

Other Criminal History Considerations

Convicted of an offense ***but not yet sentenced***

- See §4A1.2(a)(4) – 1 point §4A1.1(c)

Expungements, diversionary dispositions, and pardons

- See §4A1.2(f) and (j) and App. Notes 9 and 10

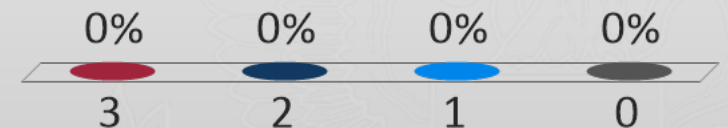
Foreign Sentences and Tribal Sentences are ***never*** counted but may be considered under §4A1.3

- See §4A1.2(h) and (i)

How many criminal history points will be assigned?

<u>Arrest Date</u>	<u>Charge/Court</u>	<u>Date/Sent. Imposed</u>
02/12/2020 (Age 22)	Theft; Dauphin County Court of Common Pleas, Harrisburg, PA	05/21/2020: Pled guilty, 12-month diversion program; 05/21/2021: successful completion, charge dismissed

- A. 3
- B. 2
- C. 1
- D. 0



Criminal History Points

Prior Offense Committed at **age 18 or older**

Points	Sentence	Time Frame (Earliest Date of Relevant Conduct)
3	>13 months	Sentence imposed or released from incarceration within 15 years of the earliest date of relevant conduct
2	≥60 days	Sentence imposed within 10 years of the earliest date of relevant conduct
1 (Max of 4)	All other convictions	Sentence imposed within 10 years of the earliest date of relevant conduct

Criminal History Points

Prior Offense Committed **before age 18**

Points	Sentence	Time Frame (Earliest Date of Relevant Conduct)
3	>13 months – only if convicted as an adult	Sentence imposed or released from incarceration within 15 years of the earliest date of relevant conduct
2	≥60 days	Sentence imposed or released from incarceration within 5 years of the earliest date of relevant conduct
1 (Max of 4)	All other convictions	Sentence imposed within 5 years of the earliest date of relevant conduct

Is this scored correctly?

Instant offense occurred on December 20, 2020

<u>Arrest Date</u>	<u>Charge / Court</u>	<u>Date / Sentence Imposed</u>	<u>Guideline / Points</u>
09/17/2008 (Age 31)	Assault Causing Bodily Injury; DeKalb County Circuit Court, Chicago, IL	12/08/2008: pled guilty, 10 months' jail	§4A1.1(b) 2 Points

A. Yes

✓ B. No

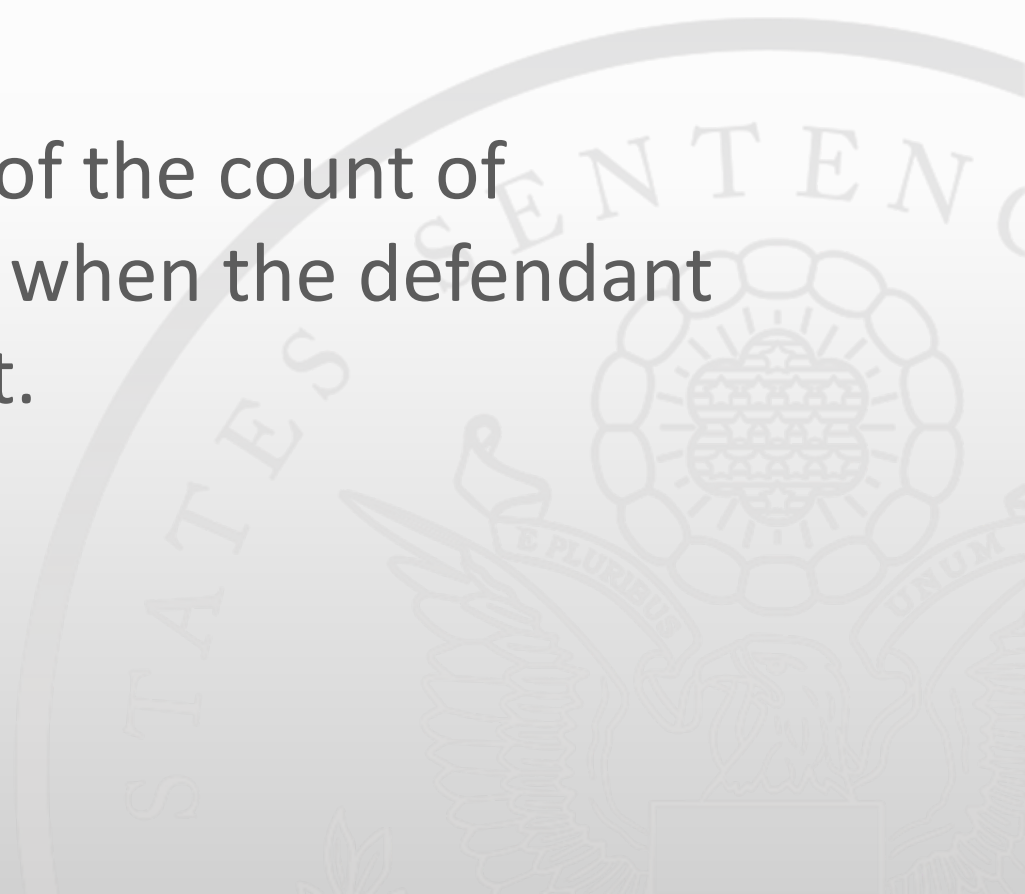


Earliest Date of Relevant Conduct

It may be **earlier** than the date of the offense of conviction;

OR

it may be **later** than the starting date of the count of conviction, *e.g.*, in a conspiracy count when the defendant did not join the conspiracy at the start.



Assignment of Criminal History Points #1

The defendant is charged with a drug conspiracy from October 1, 2018, to October 1, 2020. The earliest date of relevant conduct is October 1, 2019. She has a prior conviction for assault and was sentenced to 6 months' imprisonment on November 15, 2008.

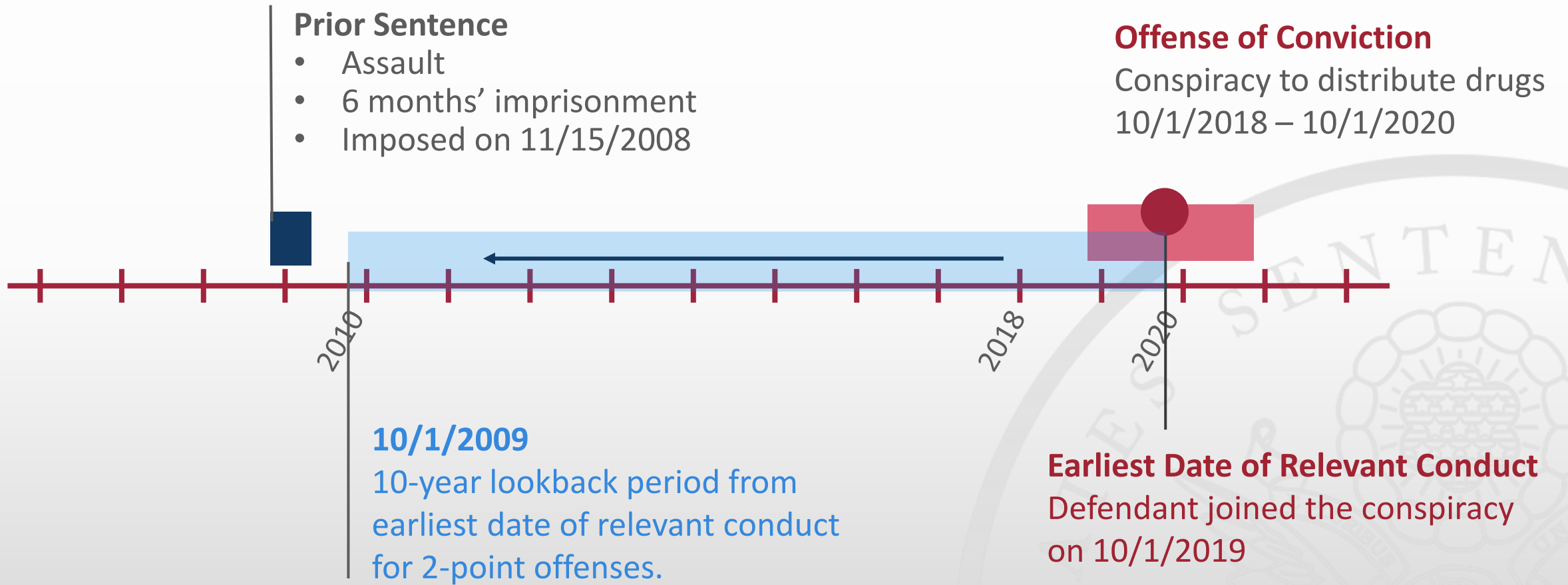
Will this conviction be assigned criminal history points?

A. Yes

 B. No



Applicable Timeframe



Prior sentence is too old to count.

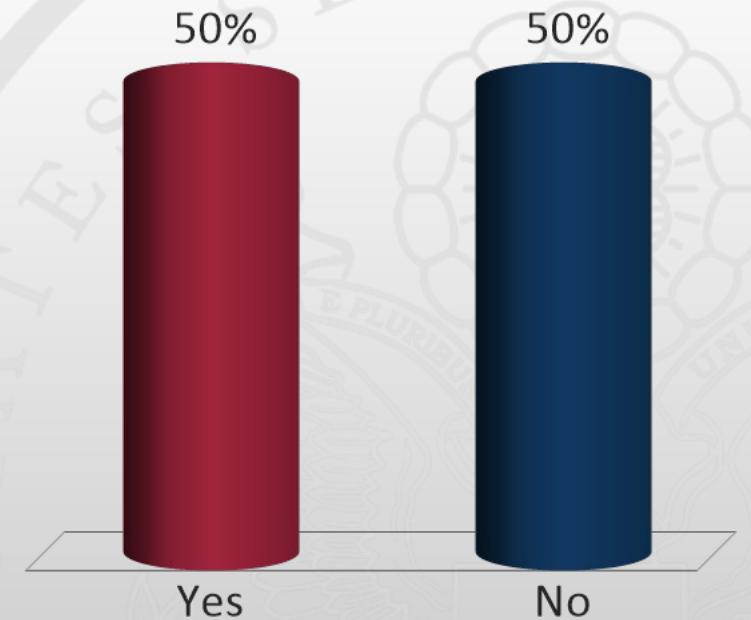
Assignment of Criminal History Points #2

The defendant is charged with a drug conspiracy from October 1, 2018, to October 1, 2020. The earliest date of relevant conduct is October 1, 2017. She has a prior conviction for assault and was sentenced to 6 months' imprisonment on November 15, 2008.

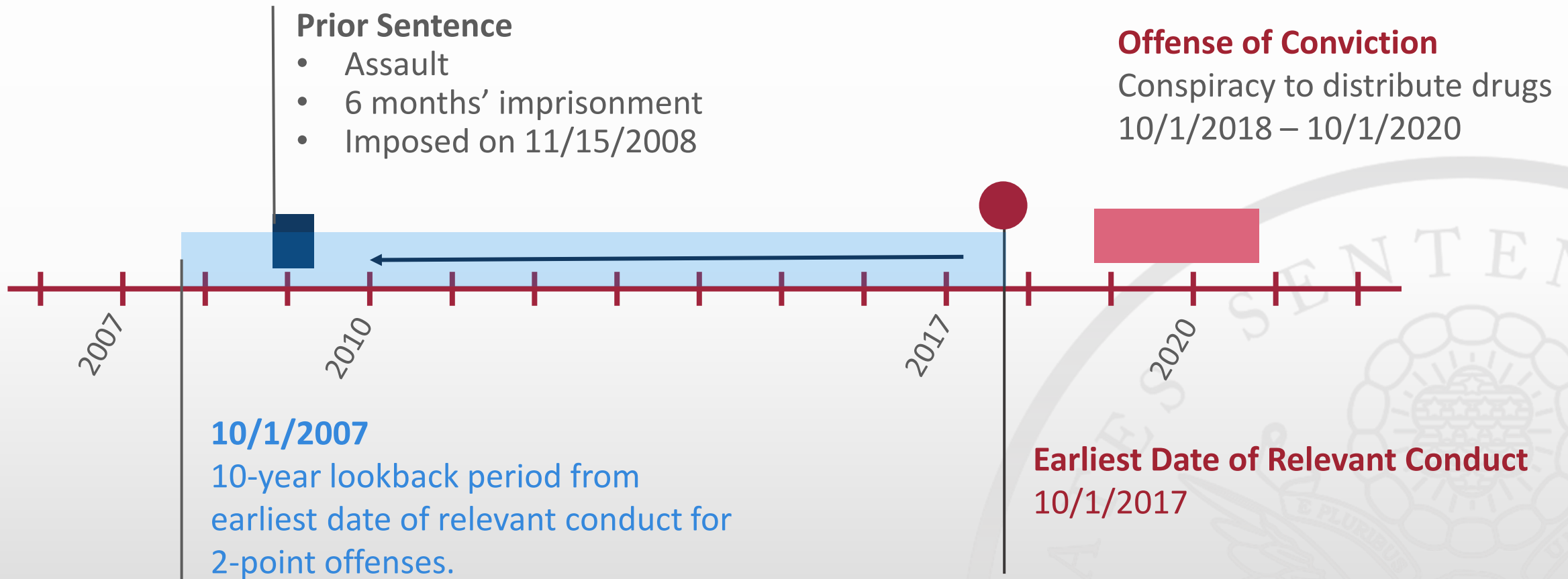
Will this conviction be assigned criminal history points?

A. Yes

✓ B. No



Applicable Timeframe



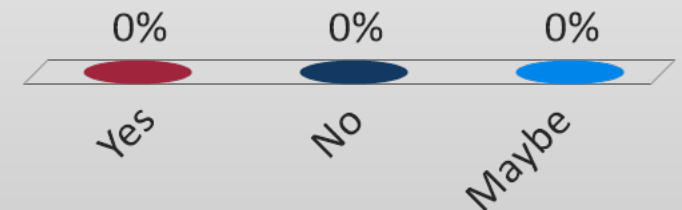
Prior sentence is assigned 2 criminal history points.

Is this scored correctly?

Instant offense occurred on December 20, 2020

<u>Arrest Date</u>	<u>Charge / Court</u>	<u>Date / Sentence Imposed</u>	<u>Guideline / Points</u>
02/24/2002 (Age 28)	Criminal Sexual Abuse; Hennepin County District Court, Minneapolis, MN	12/08/2002: pled guilty, 12 years' imprisonment	§4A1.2(e)(1) 0 Points

- A. Yes
- B. No
- ✓ C. Maybe



“Status” Points

§4A1.1(d)

Promulgated §4A1.1(e)



Relevant Conduct and “Status”

§4A1.1(d), Application Note 4 (p. 381)

If the defendant was under criminal justice sentence **during any relevant conduct**, add 2 points.

Can **only apply** if the sentence from which it resulted has been assessed criminal history points.



Should “status” be assigned?

Defendant committed the instant offense on July 1, 2020.

<u>Arrest Date</u>	<u>Charge / Court</u>	<u>Date / Sentence Imposed</u>
01/30/2009 (Age 50)	Grand Larceny; Travis County Criminal Court, Austin, TX	06/01/2009: 2 years’ probation; 02/13/2011: Violation warrant issued; remains outstanding

A. Yes

✓ B. No



Criminal History Amendments

Status Points

Numeric Redesignation

7 or More Points Required

Add 1 Point, Not 2 Points

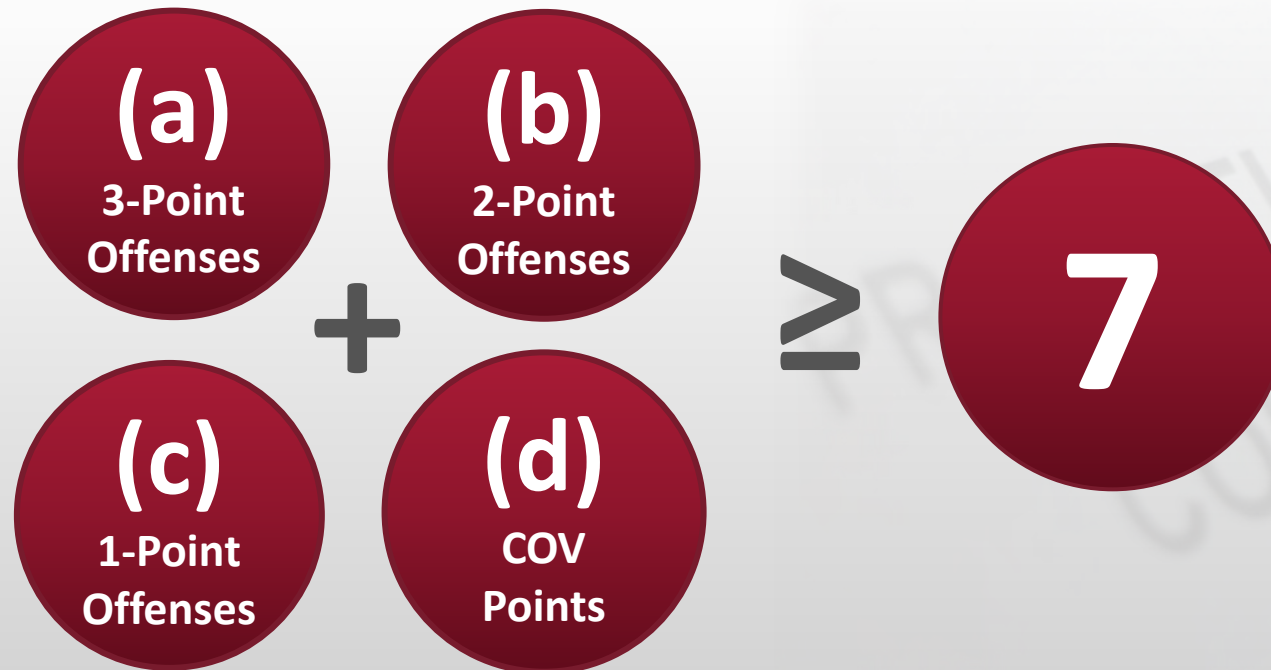


Status Points

Prong 64A(1)(e)

(e) Add 1 point if the defendant...

- (1) receives 7 or more points under subsections (a) through (d), AND**
- (2) committed the instant offense while under any criminal justice sentence ...**

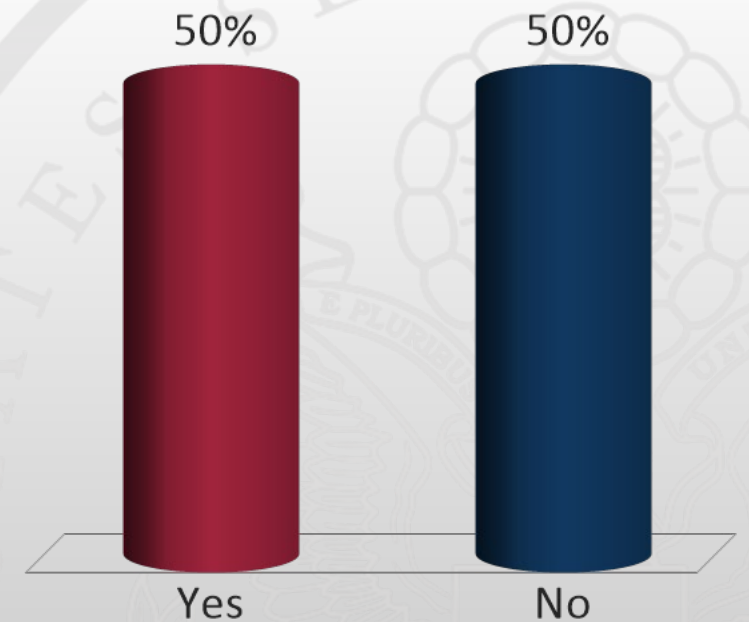


Would the defendant be assigned status points under the new §4A1.1(e)?

The defendant is convicted of a drug conspiracy. His prior criminal history includes two convictions. He received 3 criminal history points for Aggravated Assault and 2 criminal history points for Auto Theft. He was on supervised release for the Aggravated Assault at the time of the instant offense.

A. Yes

✓ B. No



Criminal History Amendments

Zero-Point Offenders

Two-Level Decrease

Two-Step Analysis

Offense Exclusions

Definitions

Upward Departure

Adjustment for Certain Zero-Point Offenders

Promulgated §4C1.1(a)

Two-Level Decrease If . . .

1

**No Criminal History
Points**

§4C1.1(a)(1)

2

No Offense Exclusions

§4C1.1(a)(2)-(10)

Conviction-Based Exclusions

Promulgated §§4C1.1(a)(5), (8)

Conviction-Based

Sex Offense

Individual Rights | §2H1.1



Defendant-Based Exclusions

Promulgated §§4C1.1(a)(2)-(3), (6)-(7), (9)-(10)

Defendant-Based

Terrorism Adjustment | §3A1.4

Violence

Substantial Financial Hardship

Dangerous Weapon

Hate Crime Adjustment | §3A1.1

Serious Human Rights Violation | § 3A1.5

Aggravating Role (§3B1.1) & No CCE

Offense-Based Exclusions

Promulgated §4C1.1(a)(4)

Offense-Based

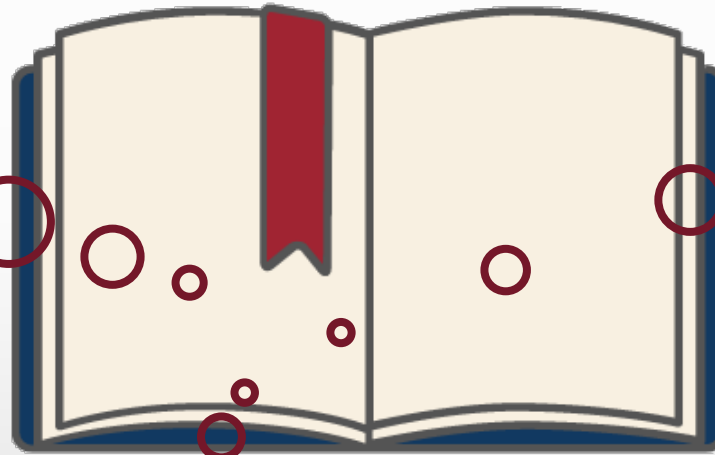
Serious Bodily Injury



Key Definitions

Promulgated §4C1.1(b)

§1B1.1
Definitions

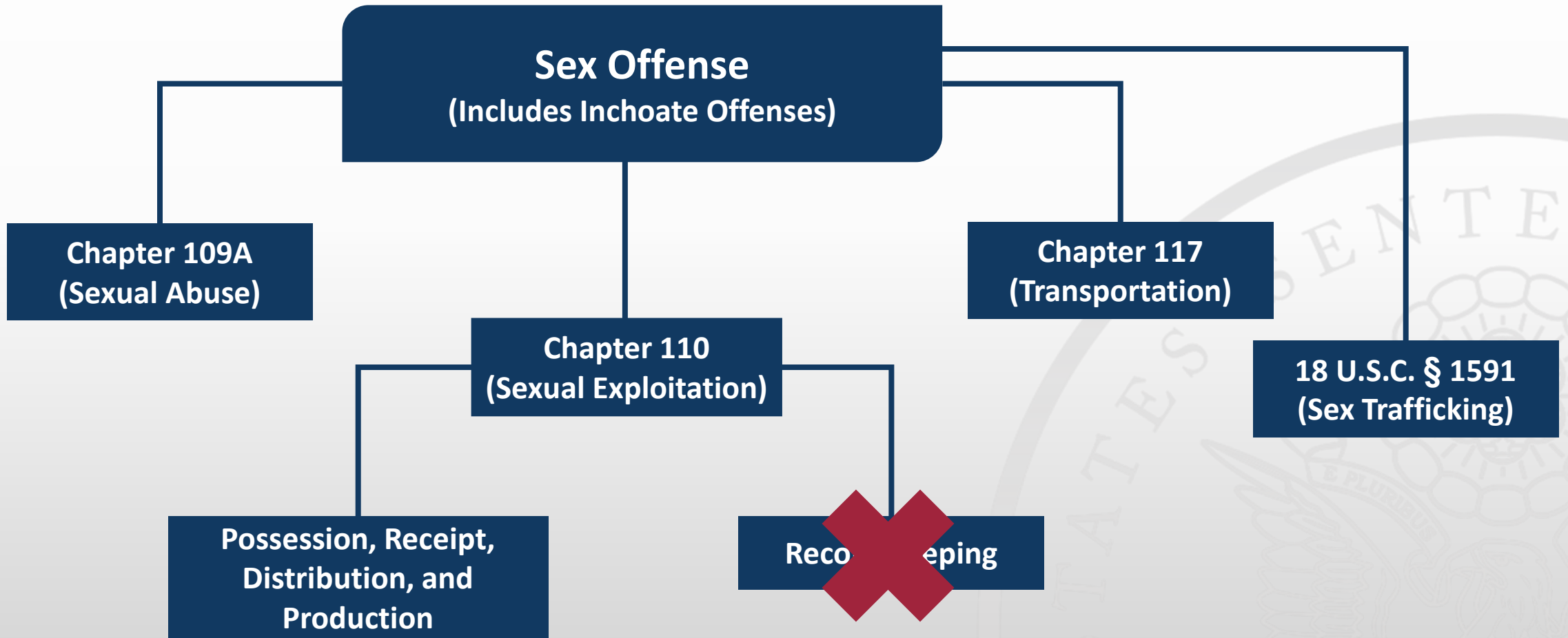


Sex Offense
Definition

Substantial
Financial
Hardship

Definition of Sex Offense

Promulgated §4C1.1(b)(2)



Section 1B1.1 Definitions

Promulgated §4C1.1(b)(1)

Dangerous Weapon

§1B1.1, App. Note 1(E)

Firearm

§1B1.1, App. Note 1(H)

Offense

§1B1.1, App. Note 1(I)

Serious Bodily Injury

§1B1.1, App. Note 1(M)

Substantial Financial Hardship Test

Promulgated §4C1.1(b)(3)

§4C1.1(b)(3) – the defendant did not **personally** cause substantial financial hardship.

See §2B1.1, App. Note (4)(F) – In determining whether the **offense** resulted in substantial financial hardship to a victim...

Substantial Financial Hardship Test

Promulgated §4C1.1(b)(3)

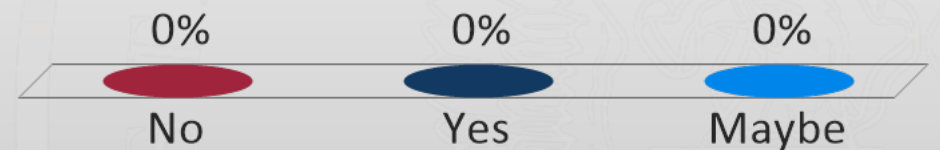
See §2B1.1, App. Note (4)(F)



Assuming no offense exclusions, does the defendant qualify for a reduction under the new §4C1.1?

The defendant has zero criminal history points but has three prior convictions for drug trafficking that did not receive criminal history points because they were outside the time frame under §4A1.1.

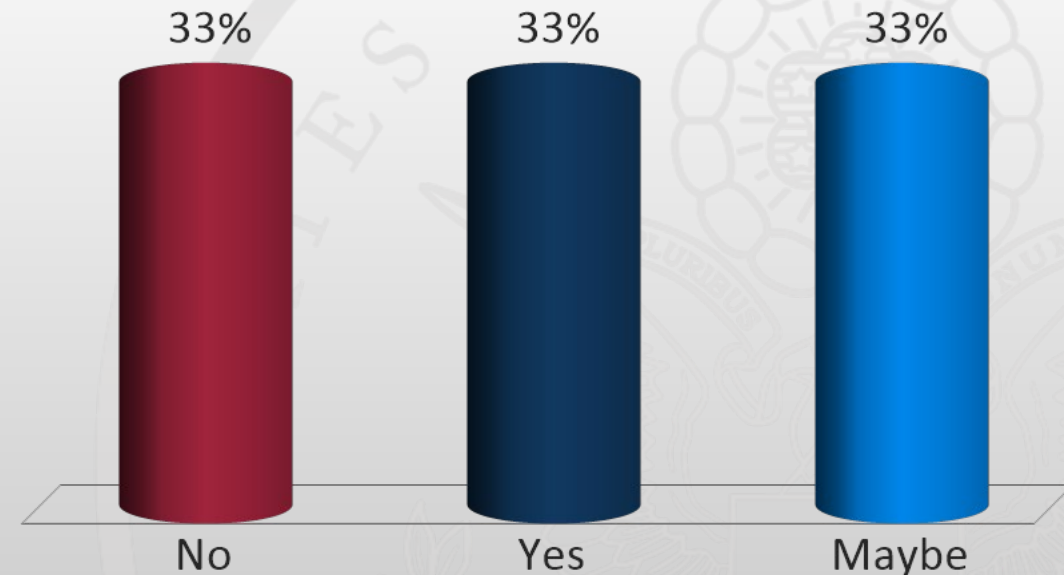
- A. No
- ✓ B. Yes
- C. Maybe



Assuming no other exclusions, does the defendant qualify for a reduction under the new §4C1.1?

The defendant has zero criminal history points but received a 2-level increase under §2D1.1(b)(1) because a firearm was possessed.

- A. No
- B. Yes
- ✓ C. Maybe



Reduction Under the New §4C1.1

The defendant was convicted of drug trafficking.

His base offense level based upon the quantity of drugs is 16.

The defendant qualified for a reduction under the new §4C1.1.

16 Drug Trafficking | §2D1.1

-3 Acceptance | §3E1.1

-2 Zero-Point | §4C1.1

11

Total Offense Level

Criminal History Amendments

Marijuana Convictions

**Downward Departure:
Promulgated §4A1.3, App. Note 3(B)**

**Criminal History Points from
Marijuana for Personal Use**

**Retroactivity of
“Status Points”
and
“Zero-Point Offenders”**




18 U.S.C. § 3582(c)(2)

“In the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has **subsequently been lowered by the Sentencing Commission** pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion...”



18 U.S.C. § 3582(c)(2)

“**The court may** reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a **reduction is consistent with applicable policy statements issued by the Sentencing Commission.**”



§1B1.10 (Reduction in Term of Imprisonment)

“Status points” and “Zero-Point Offenders” added to the list at §1B1.10.

Delayed Implementation

The court shall not order a reduced term of imprisonment based on Part A or Part B, Subpart 1 of Amendment 821 unless the effective date of the court’s order is February 1, 2024, or later.

Reduction is not Automatic

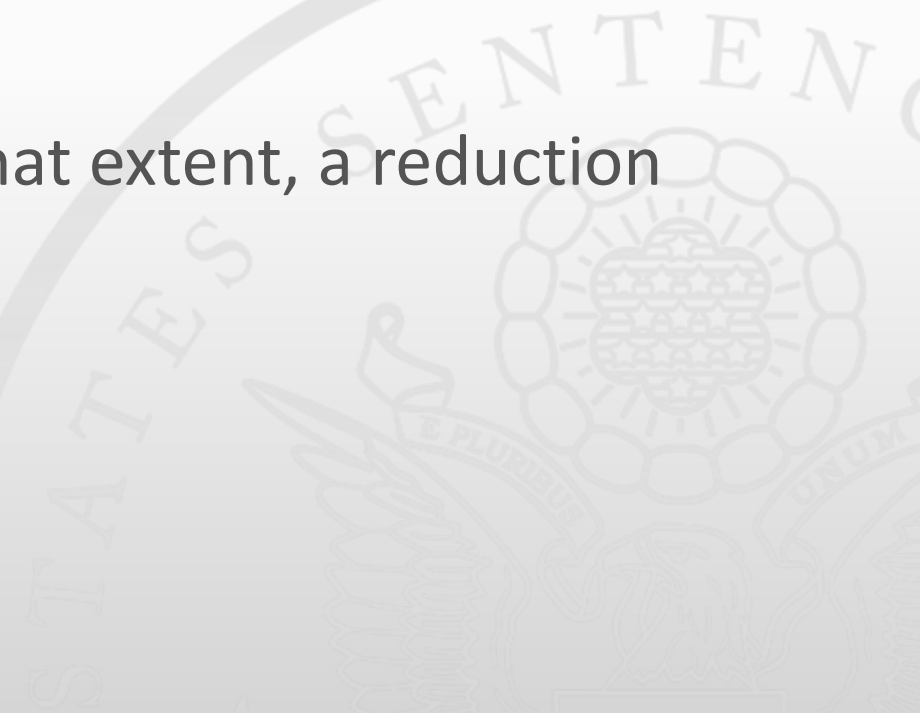
18 U.S.C. § 3582(c)(2)

If an offender is eligible for a reduction, the judge will review his or her case and decide whether a sentence reduction is appropriate.



§1B1.10 | 3-Step Process

1. Determine if defendant is eligible for a reduction.
2. Determine extent of reduction allowed.
3. Consider factors to determine, if and to what extent, a reduction is warranted.



Multiple Prior Sentences Single/Separate Sentence Determination

§4A1.2(a)(2)



Treatment of Multiple Prior Sentences

§4A1.2(a)(2)

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

Single vs. Separate

What does that mean?



Threshold Determination – Intervening Arrest

§4A1.2(a)(2)

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

Intervening Arrest - arrested for the first offense before committing the second.



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 were either:



Named in the **same charging document,**

or



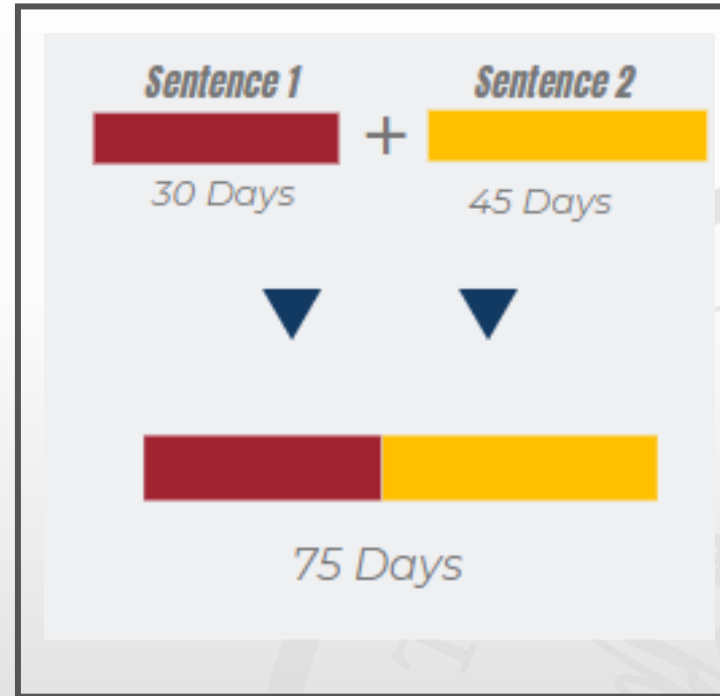
Resulted in sentences imposed on the **same day.**

Impact of “Single Sentence”

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 of Point Assignment

Single Sentence vs. Counted Separately

Sentence	Counted Separately	Single Sentence - Consecutive	Single Sentence - Concurrent
Theft - 1 Month	1 Point	1 Month	1 Month
Theft - 4 Months	2 Points	4 Months	4 Months
Theft - 9 Months	2 Points	9 Months	9 Months
	5 Points	14 Months - 3 Points	9 Months - 2 Points

Is this scored correctly?

Instant offense occurred on July 1, 2020

<u>Arrest Date</u>	<u>Charge/Court</u>	<u>Date/Sent. Imposed</u>	<u>Guideline/Points</u>
09/14/2010 (Age 22)	Possession of Cocaine; Miami-Dade Circuit Court, FL, #208-CR-2010	11/27/2010: 8 months of custody	§4A1.1(a) 3 points
09/14/2010 (Age 22)	Credit Card Fraud; Miami- Dade Circuit Court, FL, #853-CR-2010	11/27/2010: 6 months of custody, concurrent to #208- CR-2010	§4A1.2(a)(2) 0 points

A. Yes

✓ B. No



“Violence” Points

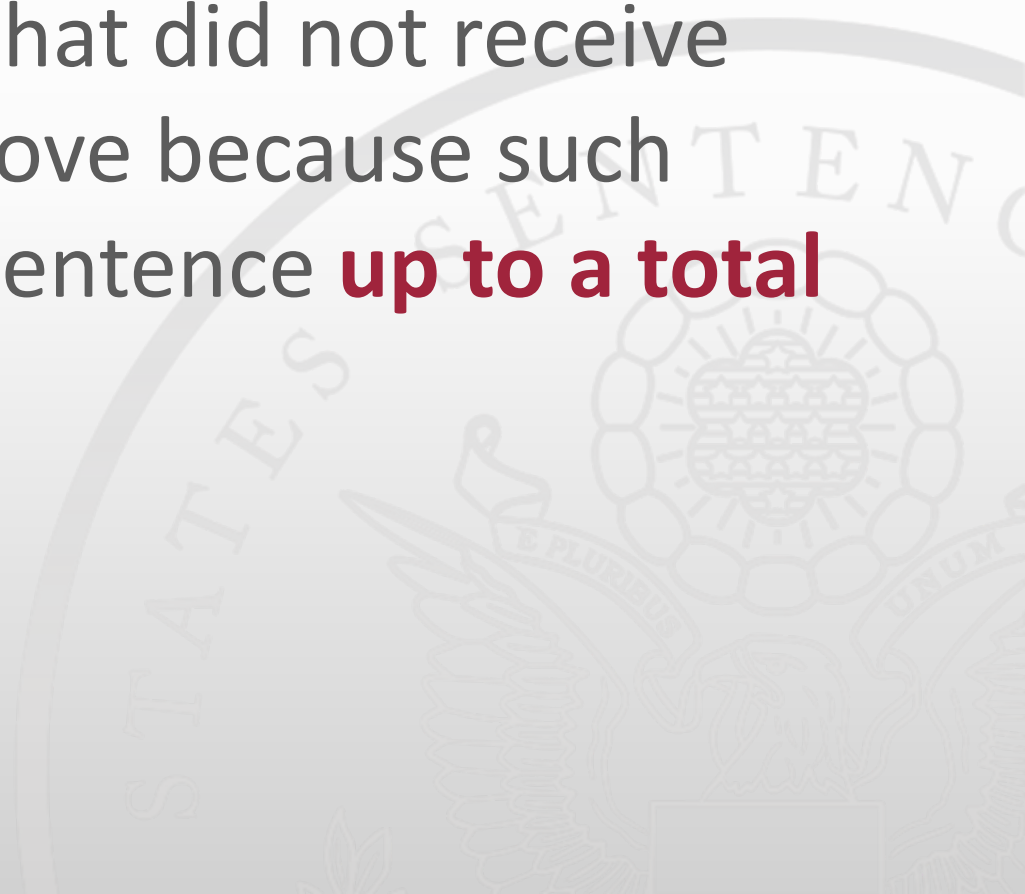
§4A1.1(e)

Promulgated §4A1.1(d)



Crime of Violence

Add 1 point for each prior sentence resulting from a conviction of a crime of violence that did not receive any points under (a), (b), or (c) above because such sentence was treated as a single sentence **up to a total of 3 points for this subsection.**



Three Crimes of Violence

Treated as a Single Sentence

The defendant has three crimes of violence (Robbery) treated as a single sentence.

All were ordered to be served **concurrently**.

Robbery Count 1

48 months

Robbery Count 2

24 months

Robbery Count 3

36 months

Three Crimes of Violence

Treated as a Single Sentence

In this case, the 48-month sentence results in the assignment of three criminal history points. The other two sentences do not add any additional points under §4A1.1(a), (b), or (c).

Robbery Count 1
48 months
+3 Points

Robbery Count 2
24 months

Robbery Count 3
36 months

Did not result in any additional points
under §4A1.1(a), (b), or (c)

Three Crimes of Violence Treated as a Single Sentence


The total number of criminal history points for this single sentence is **five**.

Robbery Count 1
48 months
+3 Points

Robbery Count 2
24 months
+1 Point

Robbery Count 3
36 months
+1 Point

Assign one additional
“violence “ point for each

The diagram consists of three colored boxes representing robbery counts. Below the middle and right boxes, there are two L-shaped arrows pointing upwards and outwards towards a central text block. The text block explains that an additional 'violence' point is assigned for each of these counts.

When **Not to Apply** “Violence” Points

The defendant has three crimes of violence treated as a single sentence all to be served **consecutively**.

3 months
Robbery 1

+

5 months
Robbery 2

+

7 months
Robbery 3

When **Not to Apply** “Violence” Points

Sentences imposed consecutively.

**3 months
Robbery 1**

+

**5 months
Robbery 2**

+

**7 months
Robbery 3**

Total Sentence is 15 months

§4A1.1(a) + 3 Points

Crime of Violence

§4A1.1(e)

Arrest Date	Charge/Court	Date Sentence Imposed	Guideline	Points
12/10/2018	Count 1: Robbery (Felony); Count 2: Robbery (Felony); Superior Court of Connecticut; Hartford, CT	04/30/2019: Count 1: 3 years' imprisonment; Count 2: 3 years' imprisonment, to run concurrently with Count 1	§4A1.1(a) §4A1.1(e)	4

Crime of Violence

§4A1.1(e)

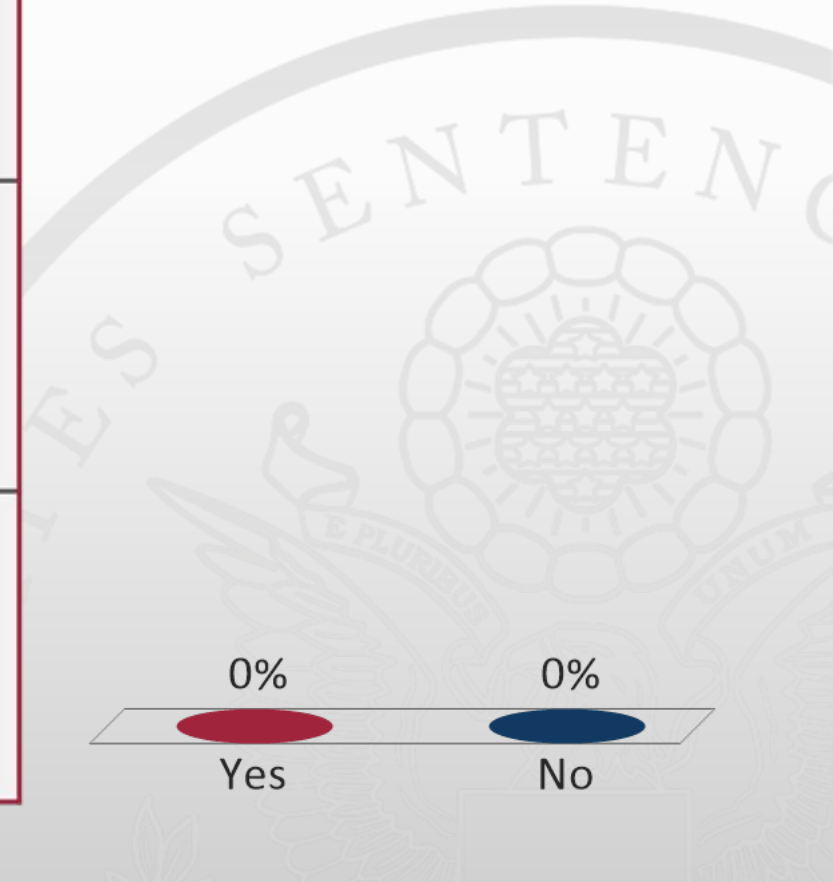
Arrest Date	Charge/Court	Date Sentence Imposed	Guideline	Points
12/05/2006	Common Law Robbery (felony) Superior County Court of Los Angeles County Los Angeles, CA 2006CR-445	09/18/2008: Pled guilty, 16 to 20 months imprisonment 02/02/2009: Released from prison	§4A1.1(a)	3
12/05/2006	Common Law Robbery (felony) Superior County Court of Los Angeles County Los Angeles, CA 2006CR-446	09/18/2008: Pled guilty, 16 to 20 months imprisonment 02/02/2009: Released from prison	§4A1.1(e)	1
12/05/2006	Common Law Robbery (felony) Superior County Court of Los Angeles County Los Angeles, CA 2006CR-447	09/18/2008: Pled guilty, 16 to 20 months imprisonment 02/02/2009: Released from prison	§4A1.1(e)	1

Assuming the instant offense is a crime of violence or controlled substance offense, does this defendant qualify as a Career Offender?

A. Yes

B. No

Arrest Date	Charge/Court	Date Sentence Imposed	Guideline	Points
12/05/2006	Common Law Robbery (felony) Superior County Court of Los Angeles County Los Angeles, CA 2006CR-445	09/18/2008: Pled guilty, 16 to 20 months imprisonment 02/02/2009: Released from prison	§4A1.1(a)	3
12/05/2006	Common Law Robbery (felony) Superior County Court of Los Angeles County Los Angeles, CA 2006CR-446	09/18/2008: Pled guilty, 16 to 20 months imprisonment 02/02/2009: Released from prison	§4A1.1(e)	1
12/05/2006	Common Law Robbery (felony) Superior County Court of Los Angeles County Los Angeles, CA 2006CR-447	09/18/2008: Pled guilty, 16 to 20 months imprisonment 02/02/2009: Released from prison	§4A1.1(e)	1



Crime of Violence Predicates for Career Offender

§4B1.2(c)(2)

“the sentences for at least two of the aforementioned felony convictions are counted separately under the provisions of §4A1.1(a), (b), or (c).”

counted separately

under the provisions of §4A1.1(a), (b), or (c)

Scoring Revocations

§4A1.2(k)



General Approach to Revocations - §4A1.2(k)



Original Sentence: 12 months imprisonment to be followed by probation

Probation Revocation: 6 months imprisonment

12 months (original = 2 points)

+6 months (revocation)

18 months (total)

3
points

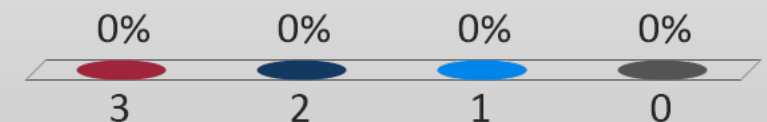
How many criminal history points?

Instant offense occurred on December 20, 2020

<u>Arrest Date</u>	<u>Charge / Court</u>	<u>Date / Sentence Imposed</u>
04/24/2015 (Age 26)	Theft of Vehicle; Miami-Dade County District Court, Miami, FL	07/30/2015: 3 months' imprisonment followed by 3 years' probation; 11/20/2017: Probation revoked, 12 months' imprisonment



- A. 3
- B. 2
- C. 1
- D. 0



Revocation May Affect Time Frame

An **adult term** of imprisonment totaling **more than 13 months** -- use the date of last release from incarceration.

An offense **committed prior to the defendant's 18th birthday** with a **sentence of 60 days or more** -- use the date of last release from confinement.

In any other case use the date of the original sentence.

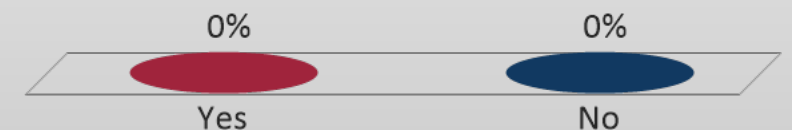
Is this scored correctly?

Instant offense occurred on December 20, 2020

<u>Arrest Date</u>	<u>Charge / Court</u>	<u>Date / Sentence Imposed</u>	<u>Guideline / Points</u>
03/24/2009 (Age 26)	Distribution of Heroin; Pima County Superior Court, Tucson, AZ	07/30/2009: 6 months' imprisonment followed by 3 years' probation; 11/20/2011: Probation revoked, 12 months' imprisonment	§4A1.1(a) & §4A1.2(k)(2) 3 Points

✓ A. Yes

B. No



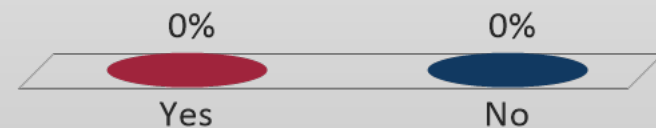
Is this scored correctly?

Instant offense occurred on December 20, 2020

<u>Arrest Date</u>	<u>Charge / Court</u>	<u>Date / Sentence Imposed</u>	<u>Guideline/Points</u>
01/24/2009 (Age 26)	Unlawful Possession of a Firearm; Suffolk County Superior Court, Boston, MA	05/30/2009: 3 years' probation; 09/03/2011: Probation revoked, 6 months' imprisonment	§4A1.1(b) & §4A1.2(k)(2) 2 Points

A. Yes

✓ B. No



Revocations Applying to Multiple Prior Sentence

App. Note 11 (pg. 389)

Where a revocation applies to multiple sentences:

- If such sentences are counted **separately**,
- add the term of imprisonment imposed upon revocation to the sentence that will result in the ***greatest increase*** in criminal history points.

Multiple Revocation Example

<u>Arrest Date</u>	<u>Charge / Court</u>	<u>Date / Sentence Imposed</u>	<u>Guideline</u>	<u>Points</u>
12/5/2008	Distribution of cocaine (felony) Kenton County Circuit Court Covington, KY Case Number: 2008-CR-856	04/27/2009: 2 years' probation 01/12/2011: Probation revoked; 15 months' custody	§4A1.1(a) §4A1.2(k)	3
01/29/2009	Distribution of cocaine (felony) Kenton County Circuit Court Covington, KY Case Number: 2009-CR-125	04/27/2009: 2 years' probation 01/12/2011: Probation revoked; 15 months' custody, concurrent with case number 2008-CR-856	§4A1.2(e)(3)	0

Upward/Downward Departures Inadequacy of Criminal History Category

§4A1.3

If reliable information indicates that the defendant's criminal history category under-represents or over-represents:

- the seriousness of the defendant's criminal history, or
- the likelihood of recidivism,

an upward or downward departure may be warranted.

Chapter Four

Criminal History Overrides

Guideline		Criminal History Category
§§4B1.1 – 4B1.2	Career Offender	VI
§4B1.4	Armed Career Criminal	IV or VI
§4B1.5(a)	Repeat and Dangerous Sex Offender Against Minors	V

Chapter Four Pointers

§§4A1.1 & 4A1.2

Relevant Conduct	Comes before criminal history
Length of Sentence	Set by maximum imposed unless suspended
Single Sentences	Threshold determination is intervening arrest
Revocation	May affect time frame

Learning Outcomes

You should now be able to:

Properly **assign** criminal history points to prior convictions;

Distinguish multiple prior sentences treated as a single sentence from those separately assigned criminal history points;

Determine when additional criminal history points apply to multiple prior sentences for crimes of violence treated as a single sentence; and

Describe the impact of the criminal history revocation rules, and

Identify promulgated 2023 amendments impacting criminal history.

Questions?



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