

CRIMINAL HISTORY CHECKLIST

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- I. CRIMINAL HISTORY POINTS are scored based upon –
 - A. Length of prior sentence (see II below)
 - B. Status of defendant at time of instant offense (see III, p.6 below)
 - C. Recency of defendant’s release from prison (see IV, p.7 below)
 - D. Whether a prior crime of violence is not scored for length because of the related case doctrine (see V, p.7 below)

- II. POINTS FOR LENGTH OF PRIOR SENTENCE – § 4A1.1(a), (b), (c)
 - A. What is a “prior sentence”?
 1. A “prior sentence” is a sentence imposed –
 - a. before sentencing on the instant offense (the offense of which the defendant has been convicted and for which is being sentenced),
 - b. for conduct that is not part of the relevant conduct for the instant offense [§ 4A1.2(a)(1) and app. n.1]
 2. Impact of suspension of imposition or execution of sentence –
 - a. if imposition or execution is suspended completely, the conviction counts as a prior sentence but gets only **1 point** [§4A1.2(a)(3)]

- b. if a term of probation that has imprisonment as a condition is imposed, the conviction counts as a prior sentence with the number of points determined by the length of imprisonment (see II-C, p.4 below) [§ 4A1.1 app. n.2, § 4A1.2(b)(2)]
- B. Certain prior sentences are never counted or are counted only under certain conditions –
 - 1. A prior sentence for certain misdemeanors –
 - a. **Never counted** –
 - i. hitchhiking
 - ii. juvenile status offenses and truancy
 - iii. loitering
 - iv. minor traffic infractions such as speeding
 - v. public intoxication
 - vi. vagrancy [§ 4A1.2(c)(1)]
 - b. **Sometimes counted** – counted only if the defendant received a term of probation of at least one year or term of imprisonment of at least 30 days *or* the prior offense is similar to an offense for which defendant is being sentenced –
 - i. careless or reckless driving
 - ii. contempt of court
 - iii. disorderly conduct or disturbing the peace
 - iv. driving without a license or with a revoked or suspended license
 - v. giving false information to a police officer
 - vi. fish and game violations
 - vii. gambling
 - viii. hindering or failing to obey a police officer
 - ix. insufficient funds check
 - x. leaving the scene of an accident
 - xi. local ordinance violations (unless the violation is also criminal under state law)
 - xii. nonsupport
 - xiii. prostitution
 - xiv. resisting arrest

- xv. trespassing [§ 4A1.2(c)(2)]
2. Expunged convictions and diversionary dispositions –
 - a. **Not counted** –
 - i. an expunged conviction [§ 4A1.2(j)]
 - ii. a diversionary disposition that does not involve a finding of guilt [§ 4A1.2(f)];
 - b. **Counted** – a diversionary disposition resulting from a finding or admission of guilt, even if there is no formal entry of a judgment of conviction [§ 4A1.2(f)]
 3. Pardons and set-asides –
 - a. **Not counted** – a sentence for a conviction for which the defendant has been pardoned, or which has been set-aside, for innocence or error of law [§ 4A1.2, app. n. 10]
 - b. **Counted** – a sentence for a conviction for which the defendant has been pardoned, or which has been set-aside, for reasons unrelated to innocence or error of law [§ 4A1.2 app. n.10]
 4. A military sentence is **not counted** unless imposed by a general or special court martial [§ 4A1.2(g)]
 5. A foreign sentence is **not counted** [§ 4A1.2(h)]
 6. A tribal court sentence is **not counted** [§ 4A1.2(i)]
 7. A sentence for a conviction on appeal is **counted**, but if execution of the sentence has been stayed pending appeal, **no points** are added for recency-of-release (see IV, p.7 below) [§ 4A1.2(l)]

8. Convictions that have been reversed or vacated –
 - b. **Not counted** if reversed or vacated because –
 - i. of errors of law or later-discovered evidence exonerating the defendant, or
 - ii. the conviction has been held constitutionally invalid
 - b. the guidelines do not confer a right of collateral attack upon a prior conviction at sentencing for the current offense [§ 4A1.2, app. n.6]

C. Calculating the length of the prison term –

1. Use the maximum term of imprisonment imposed; if a portion of prison term is suspended, count only the portion that has not been suspended [§ 4A1.2(b)]
2. If parole or probation, or other conditional sentence, is revoked, combine the original term of imprisonment with the term of imprisonment imposed because of the revocation [§ 4A1.2(k)]
3. **Adult offenses** – if the offense was committed when defendant was over 18 and the sentence –
 - a. calls for a prison term of more than 13 months, score **3 points**, unless the sentence is stale or for a related case [§ 4A1.1(a)]
 - b. calls for a prison term of at least 60 days but not more than 13 months, score **2 points**, unless the sentence is stale or for a related case [§ 4A1.1(b)]
 - c. calls for any other punishment (e.g., incarceration for 30 days), score **1 point**, unless the sentence is stale or for a related case [§ 4A1.1(c)]
4. **Juvenile offenses** – if the offense was committed when defendant was less than 18 years old and –
 - a. defendant was convicted as an adult and sentenced to

imprisonment for more than 13 months, score **3 points**, unless the sentence is stale or for a related case [§ 4A1.2(d)(1)];

- b. whether convicted as an adult or a juvenile, defendant was confined for at least 60 days, score **2 points**, unless the conviction is stale or is for a related case [§ 4A1.2(d)(2)(A)];
- c. whether convicted as an adult or a juvenile, defendant received any other sentence, score **1 point**, unless the conviction is stale or is for a related case [§ 4A1.2(d)(2)(B)].

D. A stale prior sentence does not count. A prior sentence is stale –

- 1. if it is a 3-point sentence and was imposed, or defendant was last released from incarceration on the sentence, more than 15 years before the beginning of relevant conduct for the instant offense [§ 4A1.2(e)(1)]
- 2. if it is a 2-point sentence and –
 - a. defendant was sentenced as an adult, and sentence was imposed more than 10 years before the beginning of relevant conduct for the current offense [§ 4A1.2(e)2]
 - b. defendant was sentenced as a juvenile and was released from confinement more than 5 years before the beginning of relevant conduct for the current offense [§ 4A1.2(d)(2)(A)]
- 3. if it is a 1-point sentence and –
 - a. defendant was sentenced as an adult, and sentence was imposed more than 10 years before the beginning of relevant conduct for the current offense [§ 4A1.2(e)2]
 - b. defendant was sentenced as a juvenile and was released from confinement more than 5 years before the beginning of relevant conduct for the current offense [§ 4A1.2(d)(2)(A)]

- E. Related case doctrine. A prior sentence for a related case does not count.
1. Sentences for related cases are treated as one sentence [§ 4A1.2(a)(2)]
 - a. if the sentences were concurrent, the longest maximum term of imprisonment is used to determine sentence length
 - b. if the sentences were consecutive, the aggregate maximum term of imprisonment is used to determine sentence length
 2. Cases are related if the offenses –
 - a. were not separated by an intervening arrest, **and**
 - b. they –
 - i. occurred on the same occasion,
 - ii. were part of a single common scheme or plan, **or**
 - iii. were consolidated for trial or sentencing [§ 4A1.2, app. n.3]

III. Points for status – § 4A1.1(d)]

- A. If the defendant committed the instant offense while “under any criminal justice sentence,” score **2 points** [§ 4A1.1(d)]
- B. A “criminal justice sentence” is a sentence for which the defendant has received prior-conviction point(s) and for which there is a custodial or supervisory component, even though there is no active supervision [§ 4A1.1, app. n.4]
 1. The term “under any criminal justice sentence” means a sentence that scores points for length that has “a custodial or supervisory component, although active supervision is not required” [§ 4A1.1, app. n.4]
 2. The term includes probation, parole, supervised release, imprisonment, work release, or escape status but does not include bail release or a sentence to pay a fine only [§ 4A1.1, app. n.4]

IV. POINTS FOR RECENCY OF RELEASE FROM IMPRISONMENT – § 4A1.1(e)

- A. If any of the defendant's relevant conduct for the instant offense occurred less than 2 years after defendant's release from imprisonment for a 2- or 3-point prior sentence, score –
1. **2 points**, unless
 2. the defendant got 2 points for status because of that offense, in which event score **1 point** [§ 4A1.1(e), app. n.5]
- B. If a conviction is under appeal, **no points** for recency are added if the execution of the sentence has been stayed pending appeal [§ 4A1.2(l)]

V. POINTS FOR CERTAIN RELATED CRIMES OF VIOLENCE – § 4A1.1(f)

- A. Is there a prior crime of violence for which no prior-conviction points are counted because the prior is for a related case?
1. If YES, score **1 point** for each such offense, up to a total of **3 points**.
 2. BUT if the such offenses are related because they occurred on the same occasion, score **no points**) [§ 4A1.1(f)]
- B. “Crime of violence” means what that term means for purposes of the career offender guideline [§ 4A1.2(p)].