

# Criminal History



***Keeping Probation Honest,  
Successful Guidelines Challenges and  
Creative Approaches for Mitigation***

Rachel Korenblat, AFD (ED Mo., St. Louis)  
Mo Hamoudi, AFD (WD Wash., Seattle)

# The PSR

40.	11/17/2000 (Age 18)	Uttering a Forged Instrument (felony) N.R.S. 205.090 and 205.110/Second Judicial District Court, Washoe County, Reno, NV; Docket No. CR01-0259	02/15/01: Plead guilty. 05/01/01: Sentenced to 12-48 months.	4A1.1(a)	<b>3</b>
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# Prior Sentence is Defined

## Prior Sentences, 4A1.2

Defined as: any sentence previously imposed upon adjudication of guilt, whether by guilty plea, trial, or nolo plea, for conduct ***not part of the instant offense.***

“instant offense” Includes relevant conduct—1B1.3

Example: Client charged in state with Unlawful Use of a Firearm (assault) and federal Felon in Possession of a Firearm. He pleads to the state charge or is sentenced prior to your federal sentencing. The PSR should not add points for this state conviction.

# Part of the Instant Offense = 0 Points

39.	01/01/2017 (Age 20)	Possession of Marijuana (M); Circuit Court; Jefferson County, MO; Docket No.: 17JE-CR02545	07/25/2018: Sentenced to 30 days jail.	4A1.2(a)(1) [Conduct part of instant offense]	0
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The defendant was represented by counsel.

According to court records, on January 1, 2017, the defendant possessed more than 10 grams of marijuana. The offense report is summarized under the offense conduct section of the report.

# Single Sentences = 0 Points

To determine whether a prior sentence should be separate or counted together – prior sentences are always counted separately if there is an intervening arrest.

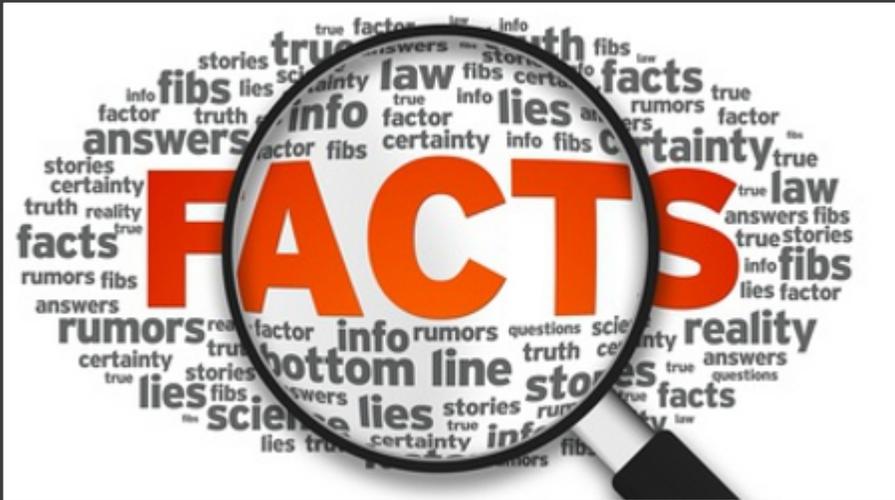
If no intervening arrest, prior sentences are counted separately unless (A) the sentences result from offenses contained in the same charging document or (B) the sentences were imposed on the same day.

# Single Sentences Example

36.	08/05/2013 (Age 23)	Burglary Second Degree (F); Circuit Court, St. Louis County, MO; Docket No.: 13SL-CR07842-01	12/12/2013: Imposition of sentence suspended and placed on five years probation, with 120 days incarceration, concurrent with Docket No.: 13SL-CR04171-01, and ordered \$500 in restitution; on 12/10/2014, violation warrant issued; on 05/14/2015, probation revoked and sentenced to five years incarceration, concurrent with Docket No.: 13SL-CR04171-	4A1.1(a)	3
37.	08/05/2013 (Age 23)	Ct. 1: Burglary Second Degree (F)  Ct. 2: Stealing Over \$500 (F); Circuit Court, St. Louis County, MO; Docket No.: 13SL-CR04171-01	12/12/2013: Imposition of sentences suspended and placed on five years probation on both counts, with 120 days incarceration on count one, concurrent with Docket No.: 13SL-CR07842-01, and ordered \$550 in restitution; on 12/10/2014, violation warrant issued; on 05/14/2015, probation revoked and sentenced to five years incarceration on both counts, concurrent with each other and Docket No.: 13SL-CR07842-	4A1.2(a)(2) <i>[single sentence with Docket No.: 13SL-CR07842-01]</i>	0

# Criminal History Points for Prior Sentences

## Adult Prior Sentences, 4A1.1



- If the sentence is 13 months or longer, the client receives 3 criminal history points if he was incarcerated within 15 years of the instant offense.  
→ *Not from the date when the indictment was filed.*
- For sentences of at least 60 days, the client receives 2 criminal history points if the sentence is imposed within 10 years of the instant offense.
- For sentences under 60 days, the client receives 1 criminal history point if the sentence is imposed within 10 years of the instant offense.
- \*Probation cannot add more than 4 points for these one pointer.

# Crimes of Violence for Criminal History Points

The Guidelines allow Probation to add one additional point for each prior sentence resulting from a crime of violence conviction that did not receive any points, up to three points. 4A1.1(e).



Watch out, not consistently applied.

# D. Of Mass PSR 2010

(48) 12/3/03 (Age 53)	Kidnapping, Assault and Battery with Dangerous Weapon, Break and Enter in Daytime to Commit A Felony - Placing Person in Fear,  Assault and Battery,  Failure to Appear (Arraigned 7/11/08)	5/7/09, Guilty. 5/15/09, Sentenced to 5 years to 5 years and 1 day State Prison, Concurrent, Credit for 330 days;  5/7/09, Guilty. 5/15/09, Sentenced to 2½ years HOC, Concurrent with Sentence Above;  5/7/09, Guilty. 5/15/09, Sentenced to 3 years Probation,	4A1.1(a) <u>3</u>
		Consecutive to Sentence Above;	
	Assault in a Dwelling with Dangerous Weapon, Assault and Battery with Dangerous Weapon,	5/15/09, Sufficient Facts Found, CWOFF with Probation for 3 years;	
	Assault with Intent to Commit Rape, Assault and Battery with Dangerous Weapon, Indecent Assault and Battery on Person Over Fourteen/ Dkt #03-0261/ Berkshire Superior Court, Pittsfield, MA	5/15/09, Nol Prossed.	

# D. of Nevada 2017 PSR

35.	12/03/2003 (Age 53)	<p>Ct. 1: Kidnapping, Assault (c265 s26), Felony;            Ct. 4: Assault and Battery with Dangerous Weapon [c265 s15A(b)], Felony;            Ct. 7: Breaking and Entering Daytime for Felony, Person in Fear (c266 s17), Felony;            Ct. 9: Assault and Battery [c265 s13A(a)], Felony/ Berkshire Superior Court, Pittsfield, MA;            Docket No.: 03-0261</p>	<p>05/07/2009: Guilty plea            05/15/2009: Sentence - Ct. 1: 5 years and 1 day State Prison, concurrent, credit for 310 days already served; Ct. 4: 5 years and 1 day concurrent with Ct. 1; Ct. 7: 5 years and 1 day concurrent with Ct. 1; Ct. 9: 30 months House of Correction (HOC) concurrent with Ct. 1            06/05/13: Available records indicate this was the defendant's release date – Defendant stated he was released in January 2013, due to receiving good-time credit</p>	4A1.1(a) 4A1.1(e)	6
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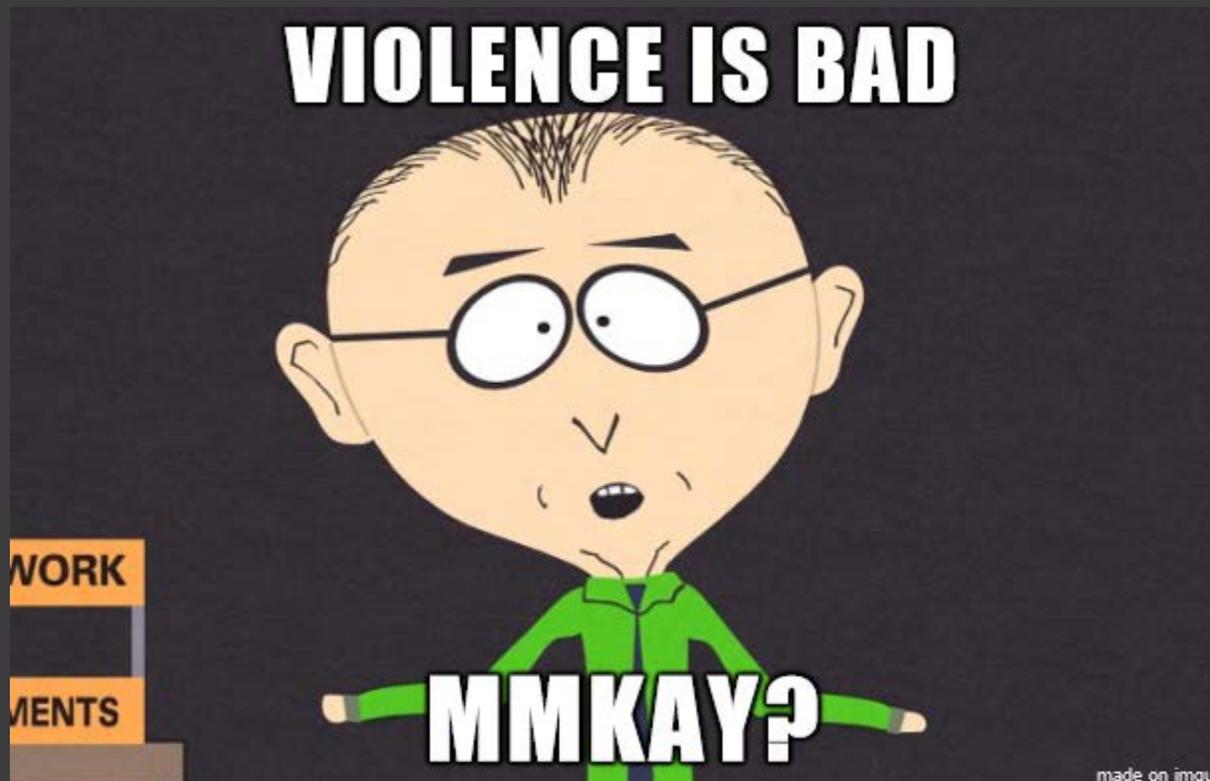
# Objections to 4A1.1(e) additional points *Peugh v. United States*, 569 U.S. 530 (2013) (ex post facto)

Review the version of the Guidelines in effect at the time of the instant offense. Prior version limited 4A1.1(e)'s application "where the sentences are considered related because the offenses occurred on the same occasion." But this was removed in the 2007 Amendments.

(f) 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 considered related to another sentence resulting from a conviction of a crime of violence~~ **was counted as a single sentence**, up to a total of **3** points for this item. *Provided*, that this item does not apply where the sentences are considered related because the offenses occurred on the same occasion.

# Objections to 4A1.1(e) additional points

- Challenge whether the convictions in the prior sentence meet the definition of crimes of violence in 4B1.2



# Prior Sentences, Warnings -- 4A1.2 (app. n. 2)



- Successfully discharged MO SIS sentences receive a point even though not a felony conviction.
- A sentence of probation is one point UNLESS the court ordered a period of confinement as a condition of probation (i.e. shock). Suspended sentences are one point if the client completed without the Court ordering time.
- For sentences that are a range (i.e., 12-36 months), use the high-end of the range to determine points.
- Use the time ordered, not actually served.
- “Time served” = count how much time was served
- Guilty pleas before a sentence is imposed count for one point 4A1.2(a)(4).

# Prior Sentences, Warnings, 4A1.2(k)

- Probation, Parole and Supervision violations can increase the amount of incarceration, which can increase criminal history points. 4A1.2(k)(1)
- Probation, Parole and Supervision violations can also extend the window of time for convictions to count, but only for 3 pointers. 4A1.2(k)(2)
- For 1 or 2 pointer adult convictions, use the date of the initial sentence, not the revocation or violation. *United States v. Beckford*, 640 Fed. App'x 558, 562 (7th Cir. 2016); *United States v. Arnold*, 213 F.3d 894, 896 (5th Cir. 2000).
- Multiple prior sentences where SIS or SES and all revoked, add the term of imprisonment to the sentence that results in the greatest increase—not to all of the sentences. 4A1.2, n.11.
- Focus is incarceration (*i.e.*, prison) not a broad concept of custody. *United States v. Marks*, 864 F.3d 575, 579 (7th Cir. 2017) (need to show not just parole was revoked, but that defendant was sent back to prison because of revo).
- A finding of a probation violation with a time-served imprisonment sentence and resentencing to probation counts as a revocation. *United States v. Reed*, 94 F.3d 341, 354 (7th Cir. 1996)

# Mistake No. 1



- Using prior sentences that are too old to count for criminal history points to enhance the base offense level.
- If a prior sentence is too old to count for criminal history points, the PSR cannot use this prior sentence as a base enhancement.
- But – recent enough SIS sentences count for criminal history and base offense enhancements even though not a felony conviction.
- Common Guidelines with enhancements based on prior sentences:
  - 2K2.1 (Firearms, app. n. 10)
  - 2L1.2 (New Illegal Reentry Guideline, app. n. 3)
  - 4B1.2 (Career Offender, app. n. 3)

# Mistake No. 2

## Adding Points for Excluded Sentences, 4A1.2(c)

- The Guidelines have a list of types of offenses that do not count for points unless the client had probation for more than one year, imprisonment of at least 30 days, or the offense is similar to [an] instant offense.

## Common offenses

- Reckless Driving, Contempt of Court, Disorderly Conduct, Driving without a License (revoked or suspended), False information to a Police Officer, Resisting Arrest, Leaving the Scene of an Accident, Insufficient checks

## Mistake No. 2, cont.

### Adding Points for Excluded Sentences, 4A1.2(c)

Certain offenses are never counted regardless of the sentence. One type of offense that Probation often misses are local ordinances.

\*\*\*Unless, the local ordinance is also a violation under state law.

# Local Ordinance Objection

## Initial PSR

38. 08/22/2015 Fight by Agreement 10/02/2015: Fined \$200. 4A1.2(c) 1  
(Age 27) (M);  
Circuit Court,  
Jackson County, IL;  
Docket No.:  
15-OV-1026

## Final PSR

38. 08/22/2015 Fight by Agreement 10/02/2015: Fined \$200. 4A1.2(c)(1) 0  
(Age 27) (M);  
Circuit Court,  
Jackson County, IL;  
Docket No.:  
15-OV-1026

## Mistake No 3.

Adding Points for Uncounseled Prior Sentences, 4A1.3 (background, pg. 390)

“Prior sentences, not otherwise excluded, are to be counted in the criminal history score, including uncounseled misdemeanor sentences where imprisonment was not imposed.”

If Probation cannot tell if the client had an attorney and he received custody, the PSR should not ascribe this sentence any points. But.....

# Challenging Criminal History

## Uncounseled MO Muni Sentences Despite Prob's Assumption They Count

34.	07/21/2009 (Age 25)	Destruction of Private Property (M); Municipal Court; St. Louis, MO; Docket No.: D00006782	04/27/2012: Sentenced to 4 days jail.	4A1.1(c)	1
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Information regarding attorney representation or waiver of counsel was unavailable. Missouri Supreme Court Rule 37.50 and 37.58(b)(2) and (d), indicate municipal judges must inform the defendant of the right to be represented by an attorney and prior to a plea shall determine the defendant has made a knowledgeable, voluntary, and intelligent waiver of the right to counsel.

According to electronic court records, on July 21, 2009, the defendant was arrested and charged with Destruction of Property.

# Uncounseled Muni Sentences W/O Records

- MO Supreme Court Rule 37.58(d) – Needs to be a written waiver of counsel if the defendant receives custody.
- No records to show waiver = 0 points

# Arguing Similar to Excluded Offenses

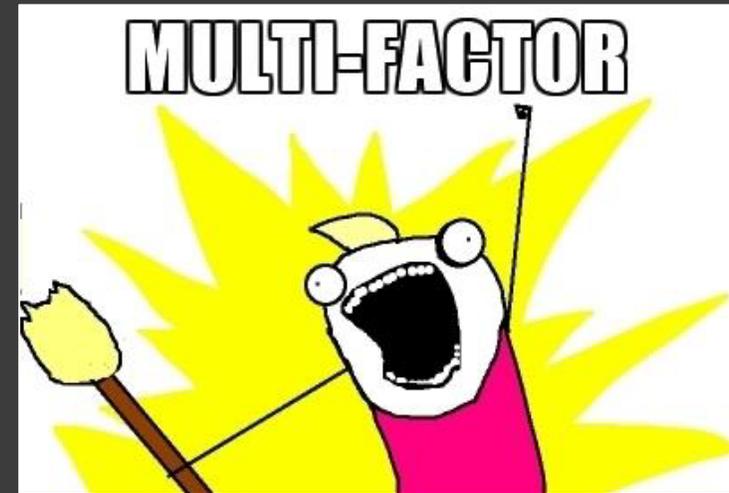
- Arguing a prior misdemeanor offense is similar to an excluded offense  
  
“Sentences for the following prior offenses *and offenses similar to them, by whatever name they are known*, are counted only if (A) the sentence was a term of probation of more than one year or a term of imprisonment of at least thirty days, or (B) the prior offense was similar to an instant offense.” 4A1.2(c) (emphasis added).

# Arguing Similar to Excluded Offenses

The Guidelines have a multi-factored test:

- (i) a comparison of punishments imposed for the listed and unlisted offenses;
- (ii) the perceived seriousness of the offense as indicated by the level of punishment;
- (iii) the elements of the offense;
- (iv) the level of culpability involved; and
- (v) the degree to which the commission of the offense indicates a likelihood of recurring criminal conduct.

4A1.2 (app. n. 12(A))



# Similar Offenses

- Shoplifting similar to insufficient checks. *United States v. Lopez-Pastrana*, 244 F.3d 1025, 1027-28 (9th Cir. 2001). *But see United States v. Sanchez*, 507 F.3d 532, 536-37 (7th Cir. 2007) (retail-theft conviction not similar to passing a bad check).
- Bail jumping is similar to contempt of court. *United States v. Garrett*, 528 F.3d 525, 529 (7th Cir. 2008).
- Damage to property similar to disorderly conduct. *United States v. Booker*, 71 F.3d 685, 690-91 (7th Cir. 1995).
- Loitering—Illegal Drug Activity (“loitering plus”) is similar to simple loitering. *United States v. Lock*, 466 F.3d 594, 602 (7th Cir. 2006).
- Failure to register as a felon similar to false information to a police officer. *United States v. Whitehurst*, 2:13-cr-00331-GMN-CWH (D. Nev.)
- Possession of a police scanner similar to listed offenses generally. *United States v. Hagenow*, 423 F.3d 638, 645-46 (7th Cir. 2005).
- Contributing to the delinquency of a minor similar to listed offenses generally. *United States v. Weller*, 102 F. Supp.3d 1065, 1072-79 (N.D. Iowa 2015).

# Juvenile Marijuana Offenses

- For states with legalized marijuana limited to people over 21 years old, argue juveniles convicted of marijuana offenses are juvenile status offenses. *United States v. Archuleta*, 865 F.3d 1280, 1289 (10th Cir. 2017) (finding no criminal history point for a 17 year old with a Colorado conviction for Possession of Marijuana Less than an Ounce under plain error)

# 8th Circuit Warning – Old, Overturned Cases

“We interpret the phrase ‘similar to’ as having its dictionary meaning of ‘[n]early corresponding; resembling in many respects somewhat alike; having a general likeness.’” *United States v. Hatch*, 94 Fed. Appx. 427 (8th Cir. 2004) (citing *United States v. Mitchell*, 941 F.2d 690, 691 (8th Cir. 1991); *United States v. Webb*, 218 F.3d 877, 880-81 (8th Cir. 2000)). This is called an elements approach.

But – in 2007 the Guidelines added the multi-factored test in Amend. 709 (called the common sense approach). This Amendment overturned prior 8th Cir. law using the elements test. *United States v. Barrientos*, 670 F.3d 870, 872 (8th Cir. 2012) (remanding for resentencing to reconsider criminal history point for MN underage drinking conviction).

Argue that pre-2007 8th Cir. case law is not applicable.

# Conviction Fails to Meet Def'n of Prior Sentence

- If the client pleads guilty but the Court imposes no punishment, argue it should not count for criminal history points.
- Guidelines defines “prior sentence” but it does not define “sentence.”
- Argue a helpful definition
  - “the punishment imposed on a criminal wrongdoer” Black’s Law Dictionary
  - If the sentencing court waives fines, no probation, no requirements imposed, argue there is no punishment and therefore no “sentence” is support the definition of “prior sentence”
  - Seventh Circuit seems to endorse this argument: “As to the cannabis conviction, the court documents show that a sentence was never imposed, and therefore no criminal history points should have been assigned.” *United States v. Brown*, 865 F.3d 566, 575 (7th Cir 2017).

# Fails to Meet Instruction for Counting Multiple Prior Sentences

Prior sentences always count separately if the sentences were imposed for offenses that were separated by an intervening arrest. If there was no intervening arrest, prior sentences are counted separately unless (A) the sentences resulted from offenses contained in the same charging instrument or (B) the sentences were imposed on the same day. 4A1.2

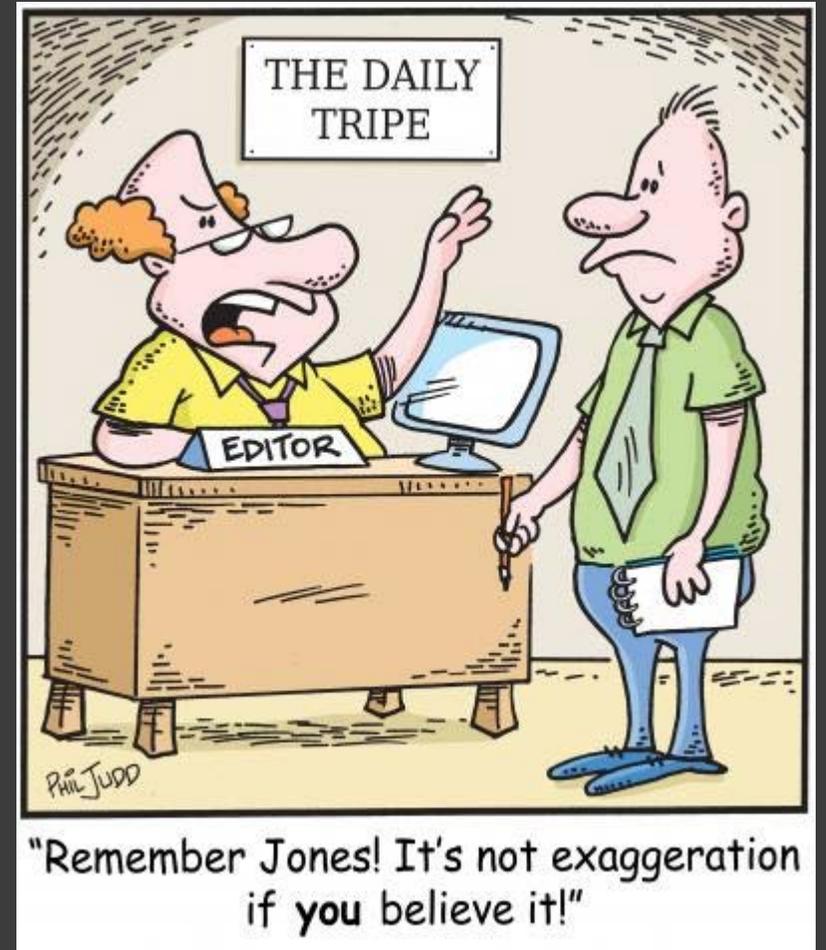
Example:

Felon in Poss of a FA, convicted in state and federal court for same gun possession and receives sentences on different days.

Only one offense → not multiple offenses

# Arguing Over-representation, 4A1.3(b)(1)

- If reliable information indicates that the defendant's criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, a downward departure may be warranted. 4A1.3(b)(1)
- The Court should horizontally depart by reducing the CHC accordingly. The client's CHC will remain this new CHC for supervision violations.



# Over-representation

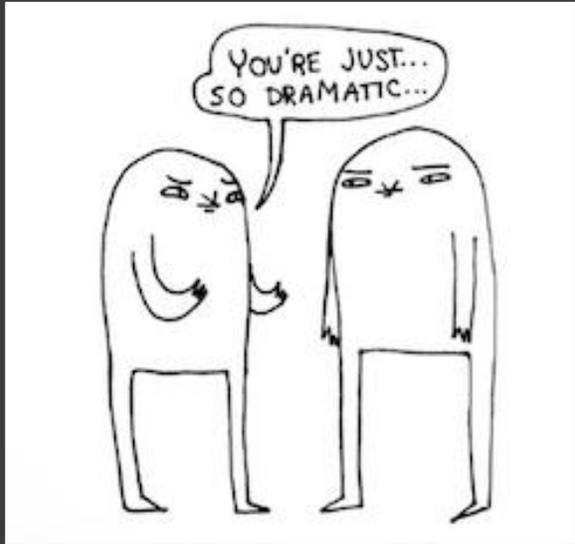
A common example is when the client has multiple prior sentences for the same course of conduct because the state split up the misdemeanors in Muni court while the District Court addressed the felonies.

For instance, a client is charged with Failure to Stop Upon Signal of Police Officer (Evading) (felony) and DUI (misdo).

The client is charged in two different filings in two different courts and sentenced on different days for the Evade and DUI. Even though the sentences are run concurrent to each other, the PSR will give both convictions points.

# Over-representation

Use 4A1.3(b)(1) to argue that while the PSR correctly added these points based on the definition of “prior sentence,” (4A1.2(a)(2)), these multiple points over-represent the seriousness of the offense because it is the same course of conduct



## DUI and Evading

Because the state decided to structure these charges into separate cases in separate courts, the convictions do not qualify, technically, under U.S.S.G. § 4A1.2(a)(2), as a single sentence. Due to the PSR’s separate treatment of these two sets of charges, Mr. XXX’s criminal history category is artificially inflated to fall within Criminal History Category III, with five criminal history points.

But these prior convictions are related, and should be counted as a single sentence, because they involve the same course of conduct. If these convictions are counted together, as they should be, Mr. XXX would fall into Criminal History Category II, with three criminal history points.

# Over-representation Arguments, more examples

- Hand-to-hand deals. The state charges each deal in a separate indictment. Same course of conduct then leads to multiple criminal history points for each conviction.
- Old instant offense. When the feds take years to indict a client, the instant offense date can capture criminal history points that would have been too stale by the time the client is indicted.
- Marijuana offenses. Because of marijuana legalization, the criminal history is over-represented.
- Time served sentence exceeds the statutory max for the charge.
- Same offense, but state and federal convictions.

## \$ Under a criminal justice sentence \$

We need not reach the issue of whether a LFO (legal financial obligation) sentence constitutes a criminal justice sentence under U.S.S.G. § 4A1.1(d), because even if it does, the imposition of additional criminal history points for such a sentence, on the record before us and without a finding of willful failure to pay, violates the Due Process Clause of the Fifth Amendment

*United States v. Parks*, 89 F.3d 570, 572 (9th Cir. 1996)

# How to talk about time



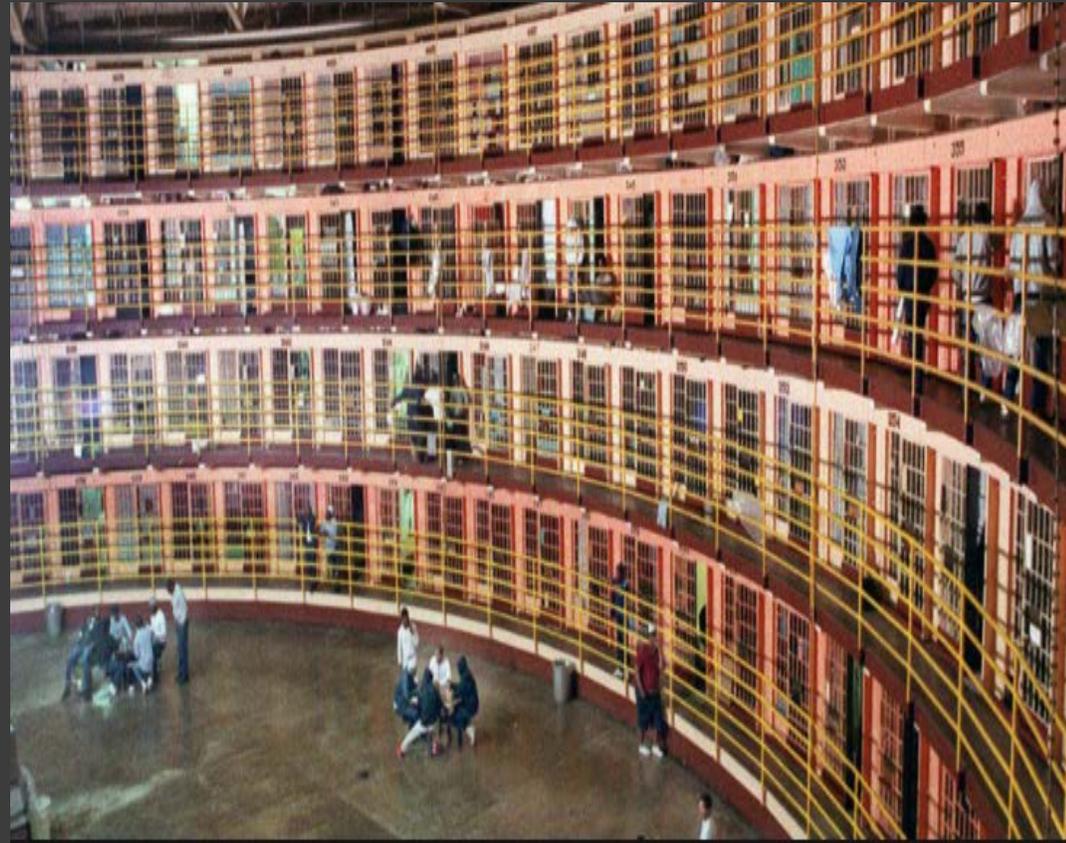
# CRIMINAL HISTORY OFTEN DRIVES GUIDELINES

- A “**benchmark**” is, by definition, “the standard,” “the gauge,” “the yardstick,” or what is “common.” Thus, anything outside the guideline range becomes, by definition, “abnormal,” “unconventional,” “unusual,” “exceptional,” and “uncommon.”
- The Supreme Court directs district courts to apply no presumption of reasonableness to the guidelines, yet refer to any sentence outside the applicable guideline range as “abnormal.”
- The Supreme Court wants district courts to abandon a presumptive adherence to the guidelines—yet the Supreme Court itself has a hard time letting go. There is a psychological term that explains why it has a hard time letting go: **cognitive anchoring**.

# Presentence Reports reinforce the anchoring

A mathematical equation blind to context

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



# How the government talks about criminal HX



- Defendant got in trouble because he or she did something bad
- Defendant is a bad guy
- Prison didn't "work"
- Defendant is not amenable to rehabilitation
- Bad guys versus good guys

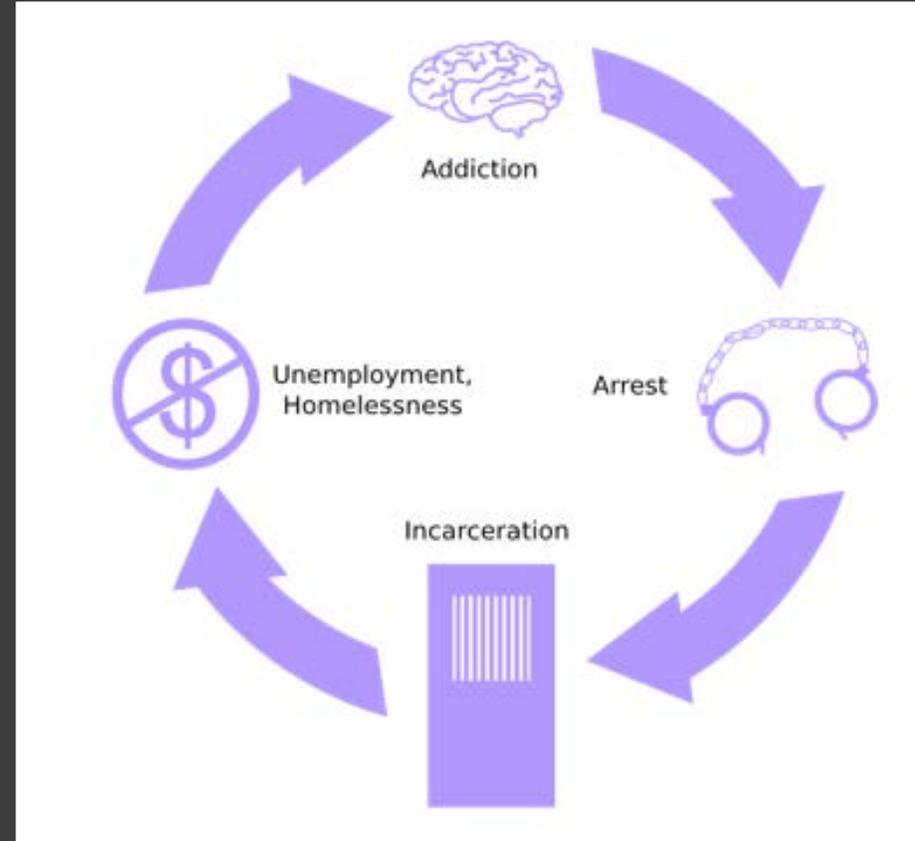
# It's called a revolving door for a reason

- Why someone ends up in the system has a lot to do with:
  - Poverty, Race, Substance Abuse, Mental Illness, Parental abuse/neglect
- Prison then aggravates the underlying causes
  - Trauma, violence, isolation, Loss of family and community ties
- Lack of reentry services poses an additional hurdle
- Other barriers to successful reentry
  - Collateral consequences



# Talk about how they got there

- Lack of opportunity
- Lack of education
- Addiction and mental illness
  - Approximately 79% of today's prisoners suffer from drug addiction or mental illness, and 40% suffer from both. <https://www.brennancenter.org/publication/how-many-americans-are-unnecessarily-incarcerated>
- Poverty
- Race
  - A black man born between 1975 and 1979, who dropped out of high school, has a 70% chance of being incarcerated during his life. <https://www.brookings.edu/research/ten-economic-facts-about-crime-and-incarceration-in-the-united-states/>
  - 2017 Stanford University study found that Black and Latino drivers face a double standard and that “police require far less suspicion to search them than their white counterparts.” <http://www.latimes.com/local/lanow/la-me-ln-stanford-minority-drive-disparities-20170619-story.html>



# Ask about prison

- Educational and counseling opportunities
- Being LGBT in prison
- Work
- Relationships with inmates and staff
- Privacy
- Discipline
- Keeping in touch with family

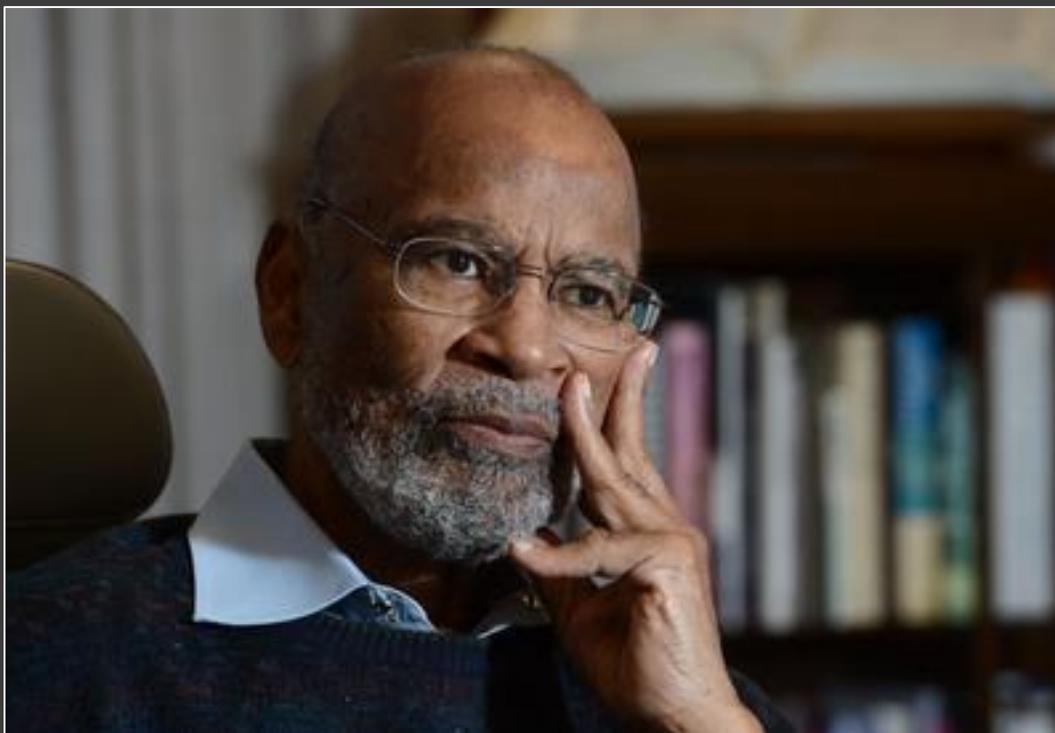


# Many American prisons are characterized by:

- Solitary confinement
- Sexual assault
  - According to a 2007 report, released by the Bureau of Justice Statistics (BJS), “Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007,” 4.5% of the state and federal prisoners surveyed reported sexual victimization in the past 12 months. Given a national prison population of 1,570,861, the BJS findings suggest that in one year alone more than 70,000 prisoners were sexually abused. *See <https://www.bjs.gov/content/pub/pdf/svsfpri07.pdf>*
- Prison gangs
- Exploitative labor practices
- Substandard medical care
  - Office of the Inspector General, DOJ, The Impact of an Aging Inmate Population on the Federal Bureau of Prisons.
- Lack of mental health services
- Lack of educational opportunities

“The numerous deaths and harm from medical misfeasance and neglect have been predictable consequences of what can best be described as a ‘non-system’ of care in California's prisons. . . . [T]o a significant extent, this case presents a textbook example of how majoritarian political institutions sometimes fail to muster the will to protect a disenfranchised, stigmatized, and unpopular subgroup of the population.”

-- United States District Court Judge Thelton Henderson, in *Plata v. Davis*



# PRISON AGES PEOPLE PREMATURELY

- “Prisoners’ physiological age averages **10 to 15** years older than their chronological age. Therefore, the consensus of those who study correctional health is that inmates are considered “geriatric, by the age of 50 or 55 years.”
- Inmates who died in hospitals were, on average, nearly **two decades** younger than non-incarcerated decedents, had significantly shorter hospitalizations, and had higher rates of several chronic conditions including cancer, liver disease and/or hepatitis, mental health conditions, and HIV/AIDS.
  - Dr. Brie Williams at UCSF

# The cost of incarceration often includes losing children

- Between 2006 and 2016, tens of thousands of children were placed into foster care solely because a parent was incarcerated. For about **5,000** of these children, their parent's rights were eventually terminated.
- **One in eight children** placed into foster care due to a parent's incarceration alone will lose that parent forever.
- On average, it takes a little over a year and a half.



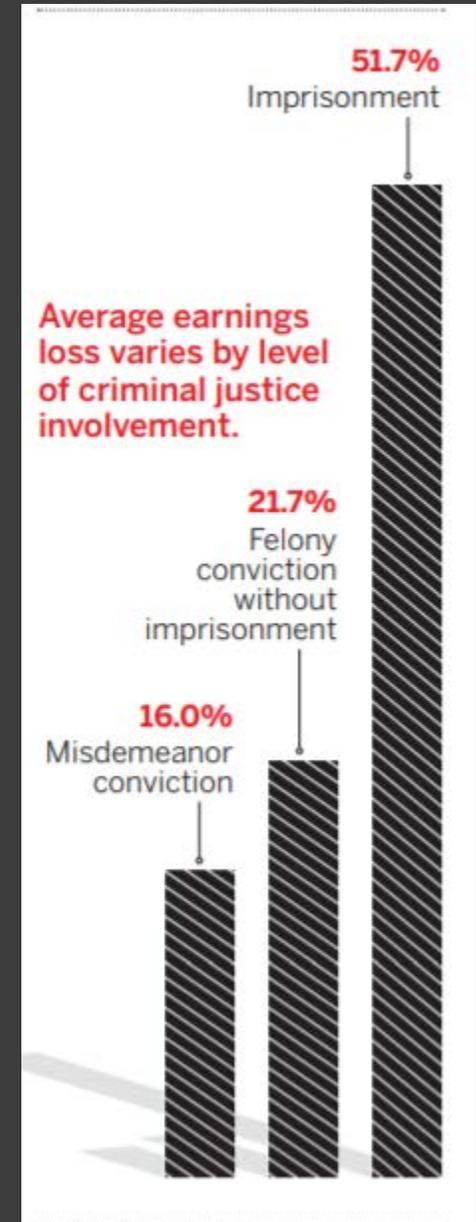
# What happens after you walk out of the gate

- Nationally, 50% of people who leave prison recidivate.
- In many states, individuals are released with nothing more than \$40 and a bus ticket. (In Louisiana, it's \$20).
- You step off the bus into homelessness, mental illness, gangs, pimps, and drug dealers.
- Felon restrictions can sever already fragile ties
  - an estimated 6.1 million Americans are disenfranchised
- RRC is not close to client's hometown.
- Getting a job interview is difficult.
- Getting a job that accommodates requirements of supervision is difficult.
- Restrictions on housing and school (especially if a sex offender).

# Financial impact of prison

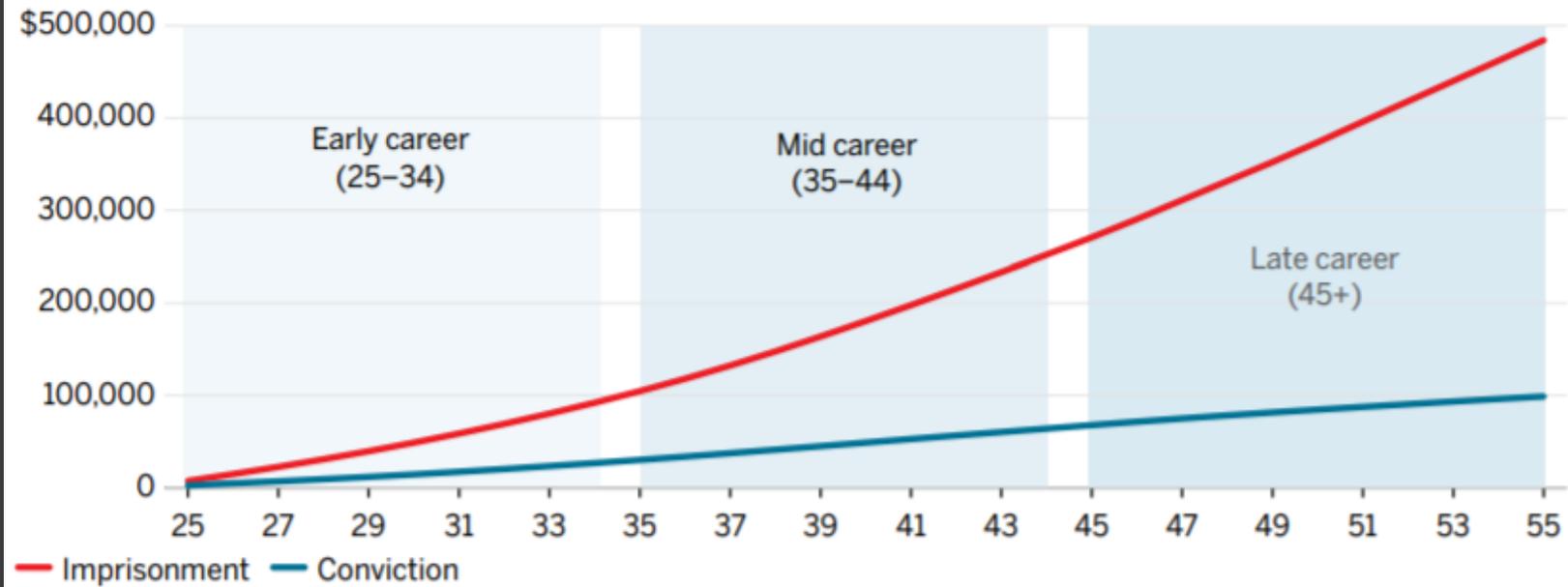
- Encounters with the criminal justice system can depress wages for **the entirety of a career**.
- Black and Latino Americans suffer these consequences most acutely.
- People who were imprisoned early in their lives earn about **half as much** annually as socioeconomically similar people untouched by the criminal justice system.

- BRENNAN CENTER



## People Who Have Been Convicted or Imprisoned Lose Up to Half a Million Dollars in Earnings Over the Course of a Career

Lost earnings (cumulative)



Source: Brennan Center analysis.

# The PSR

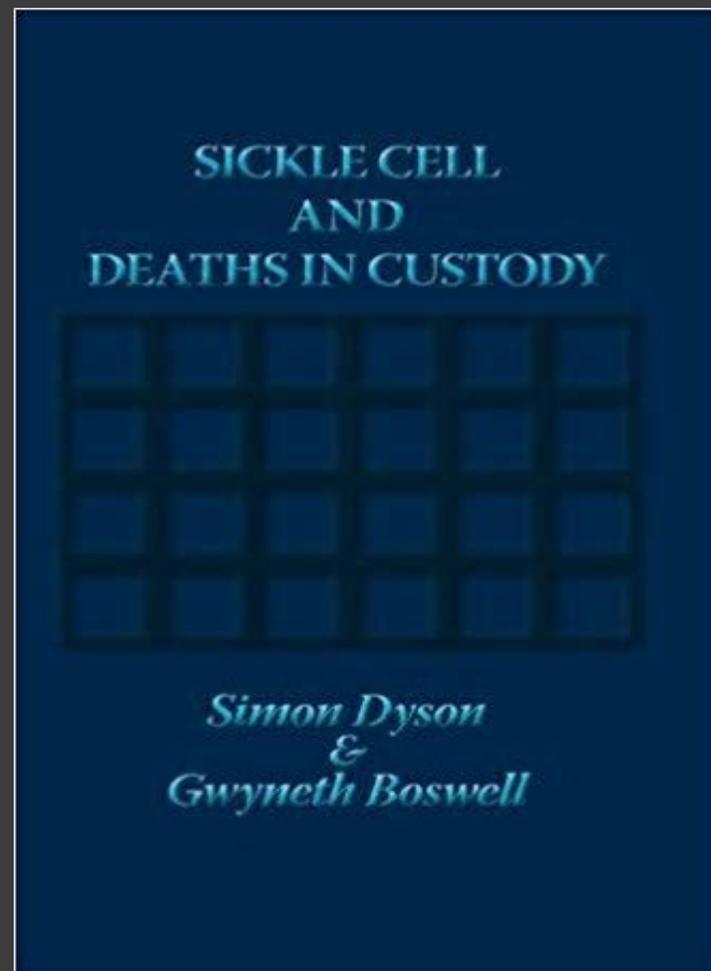
40.	11/17/2000 (Age 18)	Uttering a Forged Instrument (felony) N.R.S. 205.090 and 205.110/Second Judicial District Court, Washoe County, Reno, NV; Docket No. CR01-0259	02/15/01: Plead guilty. 05/01/01: Sentenced to 12-48 months.	4A1.1(a)	<b>3</b>
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## And now some context...

- Client's mom asked son to cash forged check in order to pay rent.
- The family had gotten their second eviction notice. Mom was in drug court and afraid of violating. She figured if her son got caught, he would be treated more leniently. She waited in a car outside of a Reno casino while her son cashed the fraudulent check.
- Our client, her son, was a felon before he ever got a chance to vote.
- Client has Sickle Cell Disease and did not get appropriate medical care in prison.
- He is lucky he did not die.

EVERY PERSON HAS A **STORY...**

There is even a book written about it...



Thank you.

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Questions?