

JAMES T. SEARCY

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March 30, 2007

The United States Sentencing Commission
One Columbus Circle, N.E.
Washington, DC 20002-8002

The Honorable Ricardo H. Hinojosa, Chair
The Honorable Ruben Castillo, Vice Chair
The Honorable William K. Sessions III, Vice Chair
The Honorable John R. Steer, Vice Chair
The Honorable Dabney Friedrich, Commissioner
The Honorable Beryl A. Howell, Commissioner
The Honorable Michael E. Horowitz, Commissioner

**RE: Proposal for Consideration -
Recommendations for Simplifying the Scoring of Criminal History**

Dear Distinguished Members of the Commission:

While I am currently employed as a probation officer for the U.S. District Court for the Middle District of Tennessee, the opinions and recommendations I forward for your consideration do not necessarily represent the Courts I serve, the U.S. Probation Office, or the Administrative Office for the U.S. Courts.

With that disclaimer, I personally urge the Commission to place high priority in addressing the need to simplify the scoring of criminal history at Chapter 4 of the guidelines.

Though the current scoring schemata is based on reasonable theory concerning severity of criminal behavior based on actual sentences imposed, I believe the current procedures are unduly cumbersome and have the potential to introduce unwarranted sentencing disparity from inadvertent errors caused in attempting to track cases from opening to close.

Some of the difficulties in tracking cases include:

Non-standardized case management procedures across state and local jurisdictions.
A major concern toward properly scoring criminal history is related to the incompleteness of case records subsequent to initial case settlement. I have personally scored convictions that exceed the 13 months' imprisonment threshold and later find that the sentence was ultimately suspended and a probationary term imposed. Some jurisdictions may simply note on the case

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file that the sentence was suspended upon granting of a motion to suspend without entering a subsequent order which modifies the original judgment. In these situations, if not caught by astute counsel, a detriment to the defendant.

Difficulty in tracking violations and subsequent rulings related to probation/parole.

A similar problem encountered is accurately capturing subsequent violation outcomes due to a lack of systematic record keeping. In order to address potential changes in scoring due to subsequent sanctions and violations, contact may be required of several different agencies to calculate "in/out" time served related to violation petitions, sanctions, and ultimately, revocations. This is increasingly a very complicated process for offenders caught in the "revolving doors" of our state and local criminal justice systems. This is particularly exacerbated in cases with lengthy criminal histories as we are experiencing with the Department of Justice's Project Safe Neighborhood (PSN) initiative.

The Proposal for Simplification.

With limited resources for gathering, analyzing, and scoring criminal history within the presentence investigation process, I believe there is an urgent need to modify the current scoring schemata to ease the time demands in assessing criminal convictions. First, I suggest any new procedure considered enable scoring decisions to be completed from review of a single source document rather than searching for multiple documents or records maintained by law enforcement and correctional agencies. In fact, I recommend a scoring schemata that would enable scoring be satisfied by review of the original judgment alone.

By focusing on the original conviction rather than the cumulative time served for any sentence, less error will be introduced into the scoring process. I believe this could be easily accomplished by making slight changes to subsections (a) through (c) to § 4A1.1, by focusing on the type of conviction rather than the actual sentence received plus any additional time imposed due to subsequent sanctions and revocations. Attached to this letter is a sample of what I propose the Commission consider.

Thank you in advance for your consideration. The work you do on behalf of the federal justice system, and more importantly, the citizenry of our nation, is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "James T. Searcy", is written over a large, loopy oval shape.

James T. Searcy
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Proposal for Modifying Criminal History Scoring Procedures at Chapter 4 -

§ 4A1.1. Criminal History Category

The total points from items (a) through (f) determine the criminal history category in the Sentencing Table in Chapter Five, Part A.

- (a) Add 3 points for each prior (felony conviction) ~~sentence of imprisonment exceeding one year and one month~~ (for any crime of violence or a controlled substance offense.)
- (b) Add 2 points for each prior (felony conviction) ~~sentence of imprisonment of at least 60 days~~ not counted in (a).
- (c) Add 1 point for each prior (misdemeanor conviction) ~~sentence~~ not counted in (a) or (b), up to a total of 4 points for this item.

NOTE 1: As to § 4A1.1(a), the terms of “crime of violence” and “controlled substance offense” are defined at U.S.S.G. § 4B1.2(a) and (b), respectively.

NOTE 2: As to § 4A1.1(c), exclusions to counting are covered at U.S.S.G. § 4B1.2(c)(1) and (2), respectively.