

SUPPLEMENT IV - HYPOTHETICALS¹

Hypothetical 1 – Prison Only

Defendant was found guilty of Burglary II (Master Group 7) for an offense committed on 02/09/2021.

Prior convictions (or Criminal History)	Date of Sentence	Scored?	Points
Assault with Intent to Kill (DC)	04/15/2014	Yes	3
PWID Heroin While Armed (DC)	05/20/2019	Yes	2
PWID Cocaine (DC)	09/05/2020	Yes	1
Total Points			6

Explanation of Scoring

The assault with intent to kill conviction (Master Group 5) is 3 points. The PWID Heroin While Armed (Drug Group 1) is a 2-point offense and the PWID Cocaine is 1 point. All three offenses were sentenced less than 10 years before the commission of the instant offense. Thus, they all count. This defendant's Criminal History score is 6, which puts the defendant in column E.

Sentence

Defendant's current offense and Criminal History put them in Box 7E. Box 7E is a prison only box; in other words, the Guidelines recommend that the in/out decision be "in" (prison). The Guidelines Grid calls for a prison sentence of 36+ months. Thus, any sentence of 36 months or more would be a compliant sentence.²

A sentence of less than 36 months, a short split sentence, or a probation sentence would not be a compliant sentence unless the judge finds a departure principle. Without a departure principle, a sentence of less than 36 months is a noncompliant sentence, and the judge should explain why they are not following the Guidelines in this case.

Hypothetical 2 – Probation Permissible

Defendant pled guilty to felony Carrying a Pistol (Master Group 8) for an offense committed on 02/09/2021.

¹ Supplement IV has received minor formatting changes and citation updates to align with the 2025 Manual (including the addition of color), but otherwise remains substantively unchanged from the 2023 Manual.

² In order to keep these examples as simple as possible, the Commission has not incorporated the supervised release portion of the sentence. The Guidelines do not change the statutory requirements for supervised release. If the court imposes a term of imprisonment greater than a year, the court must impose the term of supervised release fixed by the statute: 3 or 5 years depending on the maximum sentence for the offense. If the court imposes a prison term of one year or less, the court must choose the supervised release term, which may be up to 3 or 5 years depending on the maximum sentence for the offense. See D.C. Code § 24-403.01(b).

Prior convictions	Date of Sentence	Scored?	Points
PWID Heroin (DC)	01/1/2013	Yes	1

Explanation of Scoring

PWID Heroin (Drug Group 2) is a 1 point offense, which puts the defendant in Column B.

Sentence

The defendant’s current offense and Criminal History put them in box 8B, in which probation, a short split sentence or a prison sentence is permissible. The judge may impose a prison sentence anywhere in the range of 10 to 28 months, suspend imposition of all of it (and the accompanying 3 years of supervised release) and place the defendant on probation for any period up to 5 years, the maximum allowed by statute. The judge may also sentence the defendant to a prison sentence between 10 and 28 months, suspend execution of all but six months or less to be followed by a period of probation up to 5 years. Or the judge can sentence the defendant to a prison sentence between 10 and 28 months. All of these options would be compliant.

A prison sentence of less than 10 months or greater than 28 months or a split other than a short split or a compliant long split would not be a compliant sentence unless there is (a) a statutory enhancement or (b) a departure principle. Without an enhancement or a departure principle, a prison-only sentence of less than ten months or more than 28 months is a noncompliant sentence, and the judge should explain why they are not following the Guidelines in this case.

Hypothetical 3 – Short Split Sentence Permissible

Defendant was found guilty of Possession with Intent to Distribute Marijuana While Armed (Drug Group 1) for an offense committed on 02/09/2021.

Prior convictions (or Criminal History)	Date of Sentence	Scored?	Points
Possession of Heroin (DC)	06/07/2019	Yes	.25
PWID Cocaine (DC)	04/05/2020	Yes	1
Total Points			1.25

Explanation of Scoring

This defendant’s Criminal History score is 1.25. The Possession of Heroin conviction is a misdemeanor worth .25 points. The PWID Cocaine convictions (Drug Group 2) is 1 point. The defendant is thus in column B.

Sentence

The defendant’s current offense and Criminal History put them in Drug Box 1B, which is a short split permissible box. The judge may impose a short split sentence. For a short split sentence to be compliant, the judge must impose an incarceration sentence that is within the prison range (36 – 78 months for Drug Box 1B) and suspend execution of all but six months or less. If, however, the judge decides to impose a straight incarceration sentence, the Guidelines Grid calls for a prison sentence of 36 to 78 months. Thus, any sentence to incarceration between 36 and 78 months (including a compliant long split) would be a compliant sentence, as would a short split sentence. A prison-only sentence greater than 78 months would not be compliant unless there is (a) a statutory enhancement or (b) a departure principle. Similarly, a prison-only sentence of less than 36 months or a probation sentence would not be compliant unless there is a departure principle. Without a departure principle, probation only or a prison-only sentence of less than 36 months or more than 78 months, or a split other than a short split or a compliant long split is a noncompliant sentence, and the judge should explain why they are not following the Guidelines in this case.

Hypothetical 4 – Criminal History Issues: Adult Lapse and Misdemeanor Caps

Defendant pled guilty to an Assault with a Dangerous Weapon (Master Group 6), for an offense committed on 02/09/2021.

Prior convictions (all DC)	Date of Sentence	Max. Sentence	Scored?	Points
UUV	08/17/1997, sentence ended 10/20/2001	5 Years	No	0
Burglary II	05/03/2207, sentence ended 01/26/2009	5 Years	No	0
Possession of Heroin	07/06/2009, sentence ended 02/15/2010	180 Days	No	0
Possession of Cocaine	06/16/2016	180 days	Yes	.25
Simple Assault	04/29/2017	180 Days	Yes	.25
Failure to Register Dangerous Dog (D.C. § 8-1904)	09/09/2018	90 Days	Yes	.25
Theft II	01/12/2018	180 Days	Yes	.25
Shoplifting	08/10/2019	90 Days	Yes	.25
Disclosure of Juvenile Info (D.C. § 16-2336)	10/30/2019	90 Days	Yes	.25
Possession of Cocaine	12/17/2019	180 Days	Yes	.25

Possession of Drug Paraphernalia (D.C. § 48-1103(a))	12/01/2020	30 Days	No	0
Failure to Appear for Jury Duty (D.C. § 11-907(b))	01/06/2021	7 Days	No	0

Total Points 1

Explanation of Scoring

The first three convictions are beyond the 10-year window and have therefore lapsed. Lapsed felony convictions are only revived by subsequent felony convictions within the 10-year window. However, in this example, all of the convictions within the 10-year window are misdemeanors. As such, the lapsed felony convictions are not revived and thus do not count towards the defendant's Criminal History score.

There are nine non-lapsed misdemeanor convictions. Misdemeanors with a maximum penalty of 90 days or more are scored as .25 points. Misdemeanors with a maximum penalty of less than 90 days are not scored. Thus, because the eighth and ninth misdemeanor convictions in this example are respectively punishable by up to 30 days and 7 days, they are not scored. Note that the maximum imprisonment term for a misdemeanor dictates its scoring, not how it is codified. Thus, Failure to Register a Dangerous Dog (in Title 8) and Shoplifting (in Title 22) are scored alike. Finally, the total Criminal History score from prior misdemeanor convictions can never exceed one point. As a result, only four of the defendant's seven scored prior misdemeanor convictions count toward the total Criminal History score. The total score is therefore 1 point (4 x .25).

Sentence

The defendant's current offense and Criminal History put them in box 6B, which is a prison-only box. The prison range is between 24 and 66 months. A compliant sentence would be a prison sentence of no less than 24 months and no greater than 66 months. The lapsed criminal convictions did not count towards Criminal History, but the judge may consider them when deciding where within the prison range to sentence the defendant. The lapsed convictions are not an aggravating factor that would allow a departure from the prison range but may raise the top of the box if enhancement papers have been filed.

A prison sentence of less than 24 months, probation, short split, or a prison sentence of more than 66 months would not be compliant unless the judge finds a departure principle. Without a departure, a sentence of less than 24 months or more than 66 months is a noncompliant sentence, and the judge should explain why they are not following the Guidelines in this case.

Hypothetical 5 – Criminal History Issues: Adult Revival & Out-of-District Convictions

Defendant was found guilty of Distribution of Heroin (Drug Group 2) for an offense committed on 02/09/2021.

Prior convictions	Date of Sentence Completion	Scored?	Points
Felony RSP (DC)	11/22/1992	Yes	.5
Possession of Heroin	02/05/1999	No	0
Attempt Murder (PA)	04/15/2014	Yes	3
Total Points			3.5

Explanation of Scoring

Attempted Murder in Pennsylvania most closely matches the District’s AWIK offense; therefore, the conviction is scored as a Master Group 5 offense worth 3 Criminal History points. The Felony RSP and Possession of Heroin convictions are beyond the 10-year window and have lapsed. The lapsed Possession of Heroin conviction can never be revived because it is a misdemeanor. The 2014 Attempted Murder conviction revives the lapsed Felony RSP conviction. The Felony RSP conviction is revived at .5 points. The final Criminal History score is 3.5 points, putting this defendant in column C.

Sentence

The defendant’s current offense and Criminal History put them in Drug Box 2C, which is a short split permissible box. Thus, the judge may impose either a short split or a prison sentence (including a compliant long split). In either case, the judge must impose a prison sentence that is within the prison range (20 – 42 months for Drug Box 2C). For a short split sentence, the court may then suspend execution of all but six months or less. Any sentence of incarceration between 20 and 42 months would be a compliant sentence, as would a short split sentence.

A prison sentence of less than 20 months or more than 42 months (including a compliant long split), or a prison sentence between 20 and 42 months ESS all and placing the defendant on probation would not be compliant unless the judge finds (a) a statutory enhancement, or (b) a departure principle. Without an enhancement or departure principle, a prison sentence of less than 20 months or more than 42 months or probation is a noncompliant sentence, in which case the judge should explain why they are not following the Guidelines.

Hypothetical 6 – Criminal History Issues: Juvenile Adjudications

Defendant pled guilty to Aggravated Assault (Master Group 6), an offense committed on 02/09/2021.

Prior Adjudications	Date of Sentence	Scored?	Points
Sex Abuse II (juv.) (DC) Released from Oak Hill	01/02/2013 02/03/2015	No	0
Unregistered Firearm (juv.)(DC)	05/06/2016	No	0
Armed Robbery (juv.)(DC) Released from New Beginnings	09/08/2016 03/04/2015	Yes	1.5
PWID Cocaine (juv.)(DC)	04/05/2018	Yes	.5
Carjacking (juv.)(DC) Released from New Beginnings	07/08/2018 11/30/2020	Yes	1.5
Total Points			3

Explanation of Scoring

The Sex Abuse II adjudication was over 5 years ago. This adjudication has lapsed and cannot be revived. Unregistered firearm is a misdemeanor offense and juvenile misdemeanors are not counted towards Criminal History regardless of when they were committed. The Armed Robbery adjudication is 1.5 points, PWID Cocaine is .5 points, and carjacking is 1.5 points. Juvenile adjudication Criminal History points are normally capped at 1.5 points, except that the Armed Robbery and the Carjacking offenses are both Master Group 5 offenses and therefore not subject to the juvenile cap (any conviction for an offense in Master Group 1-5 is not subject to the cap). The PWID Cocaine offense is subject to the cap. Thus, the Criminal History for this defendant is 3 points, 1.5 each from the Armed Robbery and the Carjacking, but, practically speaking, no points from the PWID Cocaine because of the cap. Three points puts the defendant in column C.

Sentence

The defendant's current offense and Criminal History put them in Master Box 6C, which is a prison-only box. The prison sentence is 30 to 72 months.

A prison sentence of less than 30 months or more than 72 months, a short split sentence, or probation would not be compliant unless the judge finds (a) a statutory enhancement, or (b) a departure principle. Without an enhancement or departure principle, a prison sentence of less than 30 months or more than 72 months or probation is a noncompliant sentence, and the judge should explain why they are not following the Guidelines in this case.

Hypothetical 7 – Mitigating Factor

Defendant was found guilty of Armed Robbery (Master Group 5) for an offense committed on 02/09/2021.

Prior Convictions	Date of Sentence	Scored?	Points
Armed Robbery (DC)	09/03/2017	Yes	3

Explanation of Scoring

The defendant's Criminal History score is 3 for the prior Armed Robbery conviction. Three points puts the defendant in column C.

Sentence

The defendant's current offense and Criminal History put them in Master Box 5C, which is a prison-only box. The Guidelines Grid calls for 60 to 108 months. Thus, any prison sentence between 60 and 108 months would be a compliant sentence. However, this defendant substantially assisted law enforcement in the apprehension of other defendants who, along with the defendant, were involved in a series of home invasions. As a result, the judge can sentence below the lower number of months in the sentencing range (60 months) by stating that they found a substantial and compelling mitigating factor (in this case, Mitigating Factor #7, providing substantial assistance to law enforcement) to depart downward. If the judge applies a Guidelines mitigating factor, this downward departure is a compliant sentence. The Guidelines make no recommendation as to how far downward the judge should depart but encourage judges to take into account proportionality to other defendants and other offenses in determining how far below the minimum sentence they should go.

Hypothetical 8 – Aggravating Factor

Defendant pled guilty to Aggravated Assault (Master Group 6) for an offense committed on 02/09/2021, victim was a disabled person.

Prior Convictions	Date of Sentence	Scored?	Points
Simple Assault (DC)	04/02/2017	Yes	.25
Simple Assault (DC)	09/10/2018	Yes	.25
PWID Cocaine (DC)	12/03/2019	Yes	1
Total Points			1.5

Explanation of Scoring

The defendant's Criminal History score is 1.5. The only felony conviction is PWID Cocaine, which is a 1 point offense. The remaining two offenses are misdemeanors, which count for .25 points

each. All of them are in the 10-year window. A score of 1.5 puts the defendant in Criminal History column B.

Sentence

The defendant's current offense and Criminal History put them in Master Box 6B, which is a prison-only box with a sentencing prison range of 24 to 66 months. Thus, any prison sentence between 24 and 66 months would be a compliant sentence. However, the judge noted Aggravating Factor #2, that the defendant assaulted a victim who was "...particularly vulnerable due to age or reduced physical or mental capacity." As a result, the judge can sentence above the higher number of months in the sentencing range (66 months) by stating that they found a substantial and compelling aggravating factor to depart upward. If the judge applies a Guidelines aggravating factor, this upward departure is a compliant sentence. The Guidelines make no recommendation as to how far upward the judge should depart but encourage judges to take into account proportionality to other defendants and other offenses in determining how far above the maximum sentence they should go.

Hypothetical 9 – Enhancements

Defendant was found guilty of Distribution of Cocaine in a Drug Free Zone for an offense committed on 02/09/2021.

Prior convictions	Date of Sentence	Scored?	Points
Distribution of Cocaine	08/24/2008	No	0
Sentence Finished	01/09/2011		

Explanation of Scoring

The sentence for defendant's only prior conviction was completed more than ten years before the commission of the instant offense. Therefore, for scoring purposes, it is not counted and the defendant has zero Criminal History points.

Sentence

Defendant's current offense and Criminal History score put them in Drug Box 2A, in which the court may impose a prison-only sentence (including a compliant long split), a short split sentence, or straight probation. The prison range in Drug Box 2A is 12 to 30 months. In this case, there are two factors that can raise the upper numbers. First, the current offense is distribution of cocaine in a drug free zone. Under D.C. Code § 48-904.07a(b), the maximum sentence for this offense is twice that for simple distribution of cocaine. Therefore, the upper number in the prison range is raised to 60 months (2 x 30 months = 60 months). Second if enhancement papers were filed in this case under D.C. Code § 48-904.08, the maximum sentence for a second drug offense is twice that of the first. The 8/24/08 conviction for distribution of cocaine that was not counted for scoring purposes

can nonetheless be used for enhancement purposes. Therefore, the upper number in the prison range is raised to 60 months (2 x 30 months = 60 months). In this case, a prison sentence of 12 to 60 months, a short split sentence, or straight probation would be compliant.

Hypothetical 10 – Concurrent Sentences

Defendant was found guilty of two offenses: Unauthorized Use of a Vehicle (Master Group 8) and Possession of a Prohibited Weapon (Master Group 9). Both offenses were committed on 02/09/2021.

Prior convictions	Date of Sentence	Scored?	Points
Bail Reform Act (felony)	06/17/2015	Yes	1

Explanation of Scoring

Defendant has one prior conviction for a 1-point offense. A score of 1 point puts the defendant in Criminal History column B.

Sentence

The defendant's current offenses and Criminal History put them in Master Box 9B and Box 8B. These light gray boxes indicate that probation is a permissible sentence, as is a short split or a straight prison sentence. First, the judge should make the prison/probation decision. If the judge decides not to impose a term of probation but to sentence the defendant to a term of incarceration, the prison range for the PPW is 3 to 16 months and for the UUV is 10 to 28 months. The judge should impose a sentence for EACH offense that is within the prison range for that offense. Because there are nonviolent crimes, multiple offenses, one event (a search of the car incident to the arrest for the UUV found a prohibited weapon), the Guidelines rule is that these sentences must run concurrently. Unless the judge finds that the resulting sentence would be too lenient (Aggravating Factor #10), these sentences must be imposed concurrently to one another. It also would be a compliant sentence to give a term of probation or a short split sentence for each offense to run concurrently.

Hypothetical 11 – Consecutive Sentences

Defendant pled guilty to two counts of Armed Robbery (Master Group 5) in separate events that were committed on 02/09/2021.

Prior Convictions

No prior convictions. This defendant's Criminal History score is zero, which puts the defendant in Criminal History column A.

Sentence

The defendant’s current offenses and Criminal History put them in Master Box 5A, which is a prison-only box. The prison range is 36 to 84 months. The judge should impose a sentence for EACH offense that is within the prison range for that offense. The defendant was convicted of two crimes of violence, multiple victims, multiple events (wielding a knife, the defendant had robbed one pedestrian and then a few minutes later robbed another pedestrian). The Guidelines rules call for consecutive sentences in such cases. Unless the judge finds that the resulting sentence would be too harsh (excessive) (Mitigating Factor #9), these sentences must be imposed consecutively to one another.

Hypothetical 12 – Criminal History Counts for One Offense, Not for Another

Defendant was found guilty of one count of Armed Robbery (Master Group 5) for an offense committed on 02/09/2021, and one count of Burglary I While Armed [Burglary I W/A] (Master Group 3) for an offense that was committed on 03/17/2020. Both counts were sentenced on the same day.

		<u>Instant Offense</u> Armed Robbery 2/9/2021		<u>Instant Offense</u> Burglary I W/A 3/17/2020	
Prior convictions	Date of Sentence	Scored?	Points	Scored?	Points
Armed Robbery	08/23/1991	No	0	Yes	
Sentence Finished	10/01/1992				3
Attempted Robbery	04/07/1196	No	0	Yes	
Sentence Finished	04/07/1997				.5
Robbery	11/23/2001	No	0	Yes	
Sentence Finished	07/29/2010				2
Total Points			0	Total Points	5.5

Explanation of Scoring

In the 02/9/2021 Armed Robbery case, all of the defendant’s prior convictions were completed outside of the 10-year window. Therefore, they have lapsed and are not revived. The defendant’s Criminal History score is zero points for the Armed Robbery, which puts the defendant in Criminal History column A.

The scoring for the 3/17/2020 Burglary I W/A is different because the 11/23/2001 Robbery was not completed until 07/29/2010, less than ten years prior to the commission of the 03/17/20 Burglary I W/A. Therefore, it has not lapsed and is worth 2 points (Master Group 6). This conviction also revives the older felony convictions in the 03/17/20 Burglary I W/A case. The lapsed and revived Attempted Robbery conviction (Master Group 8) is scored at half a point and the lapsed and revived

Armed Robbery (Master Group 5) conviction is scored at 3 points. The defendant's Criminal History score is 5.5 points for the Burglary I W/A conviction, which puts the defendant in Criminal History column D.

Sentence

The defendant's current offense and Criminal History put them in Master Box 5A for the Armed Robbery and Master Box 3D for the first-degree burglary while armed. Both of these boxes are prison-only boxes. The prison range for Box 5A is between 36 and 84 months. The prison range for box 3D is between 126 and 216 months. Because these are crimes of violence that were committed on separate occasions, they must be sentenced consecutively. Thus, the minimum possible aggregate sentence would be 162 months (36 + 126) and the maximum possible aggregate sentence would be 300 months (84 + 216).

A prison sentence of less than 162 months (13 ½ years) or more than 300 months (25 years), a short split sentence, or probation would not be compliant unless the judge finds (a) a statutory enhancement, or (b) a departure principle. Without an enhancement or departure principle, a prison sentence of less than 162 months or more than 300 months or probation is a noncompliant sentence, and the judge should explain why they are not following the Guidelines in this case.

If enhancement papers had been filed in this case, the offenses that did not count for the Criminal History score in the Armed Robbery case could, nonetheless, count as two prior crimes of violence that would subject the defendant to a maximum sentence of life without release under D.C. Code § 12-1804(a)(2). Under these circumstances, any aggregate sentence between 162 months and LWOR would be compliant.

Hypothetical 13 – Order of Sentencing

A co-defendant of the defendant in Example 12 was found guilty of one count of Armed Robbery (Master Group 5), for an offense committed on 02/09/21, and one count of Burglary I W/A (Master Group 3) for an offense that was committed on 3/17/20. Sentencing in the Armed Robbery case was the day before sentencing in the Burglary I W/A case.

Prior convictions

Armed Robbery – no prior convictions

Burglary I W/A – the AR is a prior conviction, 3 points

Explanation of Scoring

At the time the Armed Robbery was sentenced, the defendant had no prior convictions. The Burglary I W/A was still pending even though the Burglary I W/A was committed before the Armed Robbery. Because the Armed Robbery was sentenced before (on a different day) the Burglary I W/A, it is a prior conviction for the Burglary I W/A and counts for 3 points.

The defendant's Criminal History score is zero points for the Armed Robbery, which puts them in Criminal History column A. This defendant's Criminal History score is 3 points for the Burglary I W/A, which puts them in Criminal History column C.

Sentence

The defendant's current offenses and criminal histories put them in Master Box 5A for the Armed Robbery and Master Box 3C for the Burglary I W/A. Both of these boxes are prison-only boxes. The prison range for Box 5A is between 36 and 84 months. The prison range for box 3C is between 114 and 204 months. The rule requiring consecutive sentences applies only to offenses sentenced on the same day. See Section 7.1(a). These cases were sentenced on different days. Similarly, the rule requiring consecutive sentences applies to offenses that were **committed** while the defendant was serving a sentence in another case. See Section 7.1(b). Therefore, in sentencing the Burglary I W/A, the court has discretion to determine whether it should run consecutively to or concurrent with the Armed Robbery.

Hypothetical 14 – Rule 11(c)(1)(C) Plea

Defendant pled guilty to ADW (Master Group 6) for an offense committed on 02/09/2021.

Prior convictions (or Criminal History): None.

Sentence

The Government and the defendant agreed to a Rule 11(c)(1)(C) plea. They agreed that if the defendant pled guilty to ADW, the sentence would be 24 months, ESS all, and 3 years probation. The parties also agreed that the defendant would spend the first six months in a halfway house as a condition of probation. See D.C. Code § 16-710(b-1). The defendant's case falls in box 6A (dark gray), which permits a short split sentence. However, if a short split sentence instead of a probation sentence were imposed, the initial period of incarceration of six months or less would be controlled by the Bureau of Prisons, which cannot send a person to a halfway house at the beginning of a sentence. By agreeing to six months in a halfway house as a condition of probation, the parties could ensure that the defendant would be sent to a halfway house in the District of Columbia so that they could maintain their employment. Box 6A does not permit an entirely suspended sentence with probation (absent a departure based on a mitigating factor). However, if the Court accepts the Rule 11(c)(1)(C) plea, the Court may (in fact, must) impose the agreed-upon sentence of 24 months, ESS all, three years probation with the first six months in a halfway house. This is a compliant sentence. The judge need not explain that the sentence was imposed pursuant to a Rule 11(c)(1)(C) plea. The judge, of course, does not have to accept an 11(c)(1)(C) plea agreement.

Hypothetical 15 – Compliant Long Split

Defendant pled guilty to ADW (Master Group 6) for an offense committed on 02/09/2021.

Prior convictions	Date of Sentence	Scored?	Points
PWID Heroin (DC)	03/08/2015	Yes	.25
Possession Drug Paraphernalia (Under D.C Code § 48-904.10)	06/11/2017	Yes	.25
Possession of Cocaine (DC)	01/10/2018	Yes	.25
Uttering (DC)	09/20/2019	Yes	1
Total Points			1.75

Explanation of Scoring

The possession charges are all misdemeanors and are counted .25 points each. The Uttering (Master Group 9) is 1 point.

Sentence

The defendant’s current offense and Criminal History put them in Master Box 6B. Box 6B is a prison-only box. For any number of reasons, the judge might find that a split sentence is appropriate in the instant case, perhaps “to have more time hanging over the defendant’s head” than if the judge imposed a straight prison sentence followed by supervised release. The judge could impose a “compliant long split.” In a compliant long split, both the sentence the judge imposes and the time to be served initially must fall within the prison range in the appropriate box. The prison range for Box 6B is 24 to 66 months. Thus, the judge could impose a sentence of 60 months and 3 years of supervised release, suspend all but 24 months of the prison term and the period of supervised release and place the defendant on probation for five years. Because both prison terms fall within the range, it is a compliant sentence, even in a prison-only box.

Note: It would not be permissible for the judge to impose a sentence of 60 months and suspend execution of all but 12 months since, in a compliant long split, both sides have to be in the box and 12 months is below the prison range in Box 6B. It would also not be permissible for the judge to impose a sentence of 72 months and suspend execution of all but 24 months since 72 months is above the prison range in Box 6B.

Note: Because prison is an option in every box on both Grids, a “compliant long split” is also a compliant option in every box as well, as long as the sentence imposed and the time to be served initially (the time left unsuspended) fall within the box’s prison range.

Hypothetical 16 – Multiple Counts; Merger; Mandatory Minimums

Defendant was found guilty of Armed Robbery (operable firearm) (Master Group 5); 2 counts of APO with a dangerous weapon (Master Group 6), two counts of ADW (Master Group 6), 3 counts of PCOV (Master Group 4), and CPWL (Master Group 8) in a case where he robbed a store clerk at gunpoint and shot at two plain clothes police officers who spotted the defendant identified themselves and order them to stop on 2/9/2021.

Prior convictions	Date of Sentence	Scored?	Points
Distribution of Cocaine (DC)	07/23/2015	Yes	1

Explanation of Scoring

Distribution of Cocaine is a Drug Grid 2 offense which carries 1 point. This would put defendant in column B.

Sentence

Both Master Box 5B and Master Box 6B are prison only boxes. Master Box 8B is a prison, short split, or probation permissible box. There are three victims (store clerk and two police officers) regardless of whether this is considered to be one event or two events (Armed Robbery as one; shooting of police as two). Armed robbery, APO w/ dangerous weapon, and ADW are violent crimes. Therefore, one of these offenses for each victim must be sentenced consecutively to one offense for each of the others. Master Box 8B is a prison, short split, or probation permissible box. Armed Robbery (operable firearm), APO while Armed, and PFCOV are in Master Box 5B which has a prison range of 48 to 96 months. However, all these offenses have a mandatory minimum of 60 months. CPWL is not a crime of violence.

The Court of Appeals instructs that a sentence should be given for each offense even though ultimately some of the above offenses will likely merge: ADW into APO w/ dangerous weapon and at least the two of the three counts of PFCOV for the shooting of the police officers. The possible sentencing options are as follows:

Armed Robbery (operable pistol)	60 – 96 months	MM
APO w/ dangerous weapon (officer 1)	60 – 96 months	MM
ADW (officer 1)	24 – 66 months	
APO w/ dangerous weapon (officer 2)	60 – 96 months	MM
ADW (officer 2)	24 – 96 months	MM
3 counts PFCOV (one for each of the above)	60 – 96 months	MM
CPWL	6 – 24 months	(or probation or short split)

Applying the consecutive/concurrent rules, the lowest possible aggregate sentences that could be given in this case are:

(1)(a)	Victim 1: Armed Robbery (operable pistol)	60 months
(1)(b)	Victim 2: APO while armed for first officer concurrent with ADW and ADW (which will merge)	60 months
(1)(c)	Victim 3: APO while armed for second officer concurrent with ADW (which will merge)	60 months
(2)	(1)(a), (b), and (c) consecutive to each other	180 months
(3)	PFCOV for APO while armed of second (60 months) which will merge, concurrent with PFCOV for ARC (60 months), which will not merge if different events, and concurrent with (2)	--
(4)	CPWL (6 months) concurrent with (2)	--

Applying the consecutive/concurrent rules, the highest possible aggregate sentence that could be given in this is:

(1)	Armed Robbery	96 months
(2)	APO w/ dangerous weapon merges w/ ADW	96 months
(3)	APO w/ dangerous weapon merges with ADW	96 months
(4)	PFCOV for Armed Robbery	96 months
(5)	PFCOV for APO while armed of second officer (96 months) concurrent with PFCOV for APO w/ dangerous weapon of first officer (96 months) which will merge	96 months
(6)	CPWL	28 months
(7)	(1) through (6) consecutive to each other	508 months

Hypothetical 17 – Indeterminate Sentences for Pleas and Verdicts after June 14, 2004

Defendant’s 1999 convictions were reversed on appeal. In a retrial, they were found guilty on August 3, 2014, of one count of Armed Robbery (operable pistol) and one count of PFCOV.

Prior convictions	Date of Sentence	Scored?	Points
Distribution of Heroin	04/23/2005	Yes	1
Theft I	11/08/2007	Yes	1
Total Points			2

Explanation of Scoring

Distribution of Heroin is a Drug Group 2 offense that carries one point. Theft I is a Master Group 8 offense that carries 1 point. These offenses are scored because each sentence was imposed before sentencing in the instant case.

Sentence

With two Criminal History points, both of defendant's convictions fall into Master Box 5C. Master Box 5C is a prison only box. The PFCOV conviction can be sentenced either consecutively or concurrently to the Armed Robbery. There is a mandatory minimum of 60 months for each of the offenses. The prison range in box 5C is 60 to 108 months.

Because this is an "old law" case, the Court must impose an indeterminate prison sentence in which the minimum is no greater than one-third of the maximum. The Commission used the minimum sentences imposed in the old system (as the amount a person was required to serve) to construct the Guideline prison ranges. For an indeterminate sentence to be Guidelines compliant, the minimum prison term must fall with the box and the maximum should be computed by multiplying by 3 or more (not to exceed the statutory maximum).

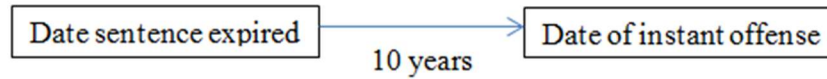
The lowest possible aggregate sentence that the Court could impose in this case is 60 to 180 months (5 to 15 years), by imposing 60 – 180 months for each offense and running them concurrently. Sixty months is both the mandatory minimum and the minimum prison sentence in Box 5C. The maximum is calculated by multiplying 60 months by 3, so the sentence will be 60 to 180 months, with a mandatory minimum of 60 months.

The highest possible aggregate sentence that the Court could impose in this case is 168 months to 504 months (14 to 42 years). The maximum Guideline sentence for the Armed Robbery is 108 to 324 months (9 to 27 years). The maximum statutory sentence for PFCOV is 60 to 180 months (5 to 15 years). Sentencing them consecutively would yield an aggregate maximum sentence of 168 to 504 months (14 to 42 years). It does not matter that Box 5C permits a sentence of 108 to 324 for the PFCOV since the offense is statutorily capped at 60 to 180 months (5 to 15 years).

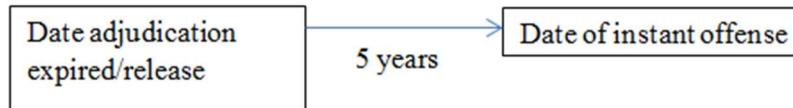
Note: The Guidelines apply only to pleas and verdicts entered on or after June 14, 2004. If a defendant is sentenced or resentenced after this date for a crime committed before August 5, 2000, and the plea or verdict was entered *before* June 14, 2004, the Guidelines do not apply. The Court may, however, take them into consideration.

Hypothetical 18 – Visual Aids: Lapse

The lapsing of adult convictions:



The lapsing of juvenile adjudications:



Hypothetical 19 – Lapse and Revival

Which of these convictions count towards the Criminal History Score?

A defendant is before you for sentencing. The offense in the instant case was committed on June 1, 2021. The defendant has the following Criminal History:

1. A juvenile adjudication for Theft II where supervision ended on March 16, 2002.
 - *No. Prior juvenile adjudications lapse if they are beyond the five-year window. A juvenile adjudication that has lapsed can never be revived.*
2. An adult conviction for Robbery where supervision ended on March 16, 2007.
 - *Yes. This conviction has lapsed, but all lapsed felony convictions are revived if any prior felony convictions/part of this sentence occurred within the 10-year window preceding the commission of the instant offense. In this case, both items 4 and 5 serve to revive this conviction.*
3. An adult misdemeanor conviction where supervision ended on March 16, 2007.
 - *No. This conviction has lapsed. Lapsed misdemeanor convictions cannot be revived and are never scored.*
4. An adult conviction for Assault II where supervision ended on March 16, 2012.
 - *Yes. This conviction or part of its sentence occurred within the 10-year window preceding the commission of the instant offense.*
5. An adult conviction for Carjacking where supervision ended on March 16, 2017.
 - *Yes. This conviction or part of its sentence occurred within the 10-year window preceding the commission of its instant offense. It also serves to revive all lapsed felony convictions.*