No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2020

****

SEAN JASON HARSTINE, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent

****

MOTION TO PROCEED IN FORMA PAUPERIS

****

The Petitioner, Sean Jason Harstine, by his undersigned counsel, requests leave to file a Petition for Writ of Certiorari without prepayment of costs and to proceed in forma pauperis pursuant to Rule 39 of the Supreme Court Rules. Counsel was appointed in the lower court pursuant to 18 U.S.C. § 3006 and Rule 44, Fed. R. CR. P.

This the 5th day of October, 2020.

Respectfully submitted,

RUDOLPH A. ASHTON, III
Panel Attorney,
Eastern District of North Carolina
N.C. State Bar No. 0125
Post Office Drawer 1389
New Bern, North Carolina 28563-1389
Telephone: (252) 633-3800
Email: RAshton@dunnpittman.com

No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2020

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SEAN JASON HARSTINE, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent

****

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

****

RUDOLPH A. ASHTON, III
Panel Attorney
Eastern District of North Carolina
North Carolina State Bar No. 0125
P.O. Drawer 1389
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Telephone: (252) 633-3800
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QUESTION PRESENTED

I. WHETHER IT WAS ERROR TO COUNT CRIMINAL HISTORY POINTS FOR FOUR 2004 BREAKING AND ENTERING (B&E) CONVITIONS WHEN THE DEFENDANT WAS ONLY 17 YEARS OLD AT THE TIME OF THE OFFENSES.

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TABLE OF CASES AND STATUTES

CASES

STATUTES

PETITION FOR WRIT OF CERTIORARI

Petitioner Sean Jason Harstine respectfully prays this Court that a writ of certiorari issue to review the opinion of the United States Court of Appeals for the Fourth Circuit, issued on July 8, 2020, affirming his judgment and sentence.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit for which review is sought is United States v. Sean Jason Harstine, No. 19-4384 (4th Cir., July 8, 2020). The opinion is unpublished. The opinion of the United States Court of Appeals for the Fourth Circuit is reproduced in the Appendix to this petition as Appendix A. The judgment is reproduced as Appendix B. The mandate is reproduced as Appendix C.

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Fourth Circuit was issued on July 8, 2020. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

On August 7, 2018, the Petitioner, Shawn Jason Harstine, pled guilty to drug and firearm offenses in the Eastern district of North Carolina. He received three (3) criminal history points for offenses committed when he was only 17 years old. Counsel objected claiming the convictions were outside the five-year period for scoring purposes. The district court concluded that although Harstine would have

been a juvenile in other states, he was not a juvenile in North Carolina. Therefore the criminal history points were assigned. An interpretation of the guidelines is at issue here. Guideline §4A1.1 is reproduced as Appendix E, and guideline § 4A1.2 is reproduced as Appendix F. It is also contended that the interpretation of the guidelines herein denied the Petitioner of equal protection under the law as required by the Fourteenth Amendment of the United State Constitution. (Appendix K).

STATEMENT OF THE CASE

Procedural History

On November 16, 2017 Sean Jason Harstine and three other individuals were charged in a 12 count indictment with drug and firearm offenses. Mr. Harstine was charged in Counts 1, 8, 10 and 11 with conspiracy and drug offenses involving heroin and methamphetamine pursuant to 21 U.S.C. § 841 and § 846, and in Count 12 with possession of a firearm in furtherance of a drug trafficking crime and aiding and abetting pursuant to 18 U.S.C. § 924(c)(1)(A)(i). On August 7, 2018, Mr. Harstine pled guilty to each of the above counts without a plea agreement before the Honorable James C. Dever, III, Chief District Court Judge. The plea was accepted, and he was adjudged guilty of the charges contained in Counts 1, 8, 10, 11, and 12.

The case came on for sentencing before Judge Dever at the May 15, 2019 term of court. Several objections were overruled. Judge Dever determined that the total offense level was 33, the criminal history category V, and the advisory

guideline range for Counts 1, 8, 10 and 11 was 210 to 262 months, and that the Count 12 firearm charge carried a five year consecutive sentence. The Defendant received a sentence of 210 months on Counts 1, 8, 10 and 11, to be served concurrently and a consecutive 60 month sentence on Count 12, for a total sentence of 270 months. He received a five year term of supervised release. (Appendix D).

On May 20, 2019 Mr. Harstine's pro se notice of appeal was filed. In an opinion entered by the Fourth Circuit Court of Appeals on July 8, 2020, his judgment was affirmed by unpublished per curiam opinion. (Appendix A).

Statement Of Facts

In September, 2016 an investigation was initiated by the Wilson County Sheriff's Department into alleged drug trafficking activities involving Sean Harstine and the three co-defendants. Several confidential informants were used to conduct controlled purchases of crystal methamphetamine (crystal meth) and heroin.

On December 5, 2016 officers conducted a traffic stop on co-defendant Pate's vehicle. Harstine was in the driver's seat and Pate was the passenger. A canine alerted and drugs were found in the vehicle, which was towed. The following day the tow truck service notified law enforcement that a loaded firearm was found in the vehicle. Pate and Harstine were charged in Count 12 with possessing a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c).

The Presentence Report assigned 3 criminal history points for several breaking and entering convictions occurring in 2004 when Sean Harstine was age

17. (Appendix G). Counsel objected, claiming that at 17 years of age in every other state in the country he would have been in juvenile court. Counsel further argued that the import of this was that under the guidelines there would only be a five-year look-back period. The district court determined that since Harstine was not a juvenile in North Carolina, the guidelines assigned criminal history points to all sentences imposed within fifteen years of the instant offense. The objection was therefore overruled.

Further facts will be developed during the argument portion of this petition.

REASONS FOR GRANTING THE PETITION

I. IT WAS ERROR TO COUNT CRIMINAL HISTORY POINTS FOR THE FOUR 2004 BREAKING AND ENTERING (B&E) CONVITIONS WHEN THE DEFENDANT WAS ONLY 17 YEARS OLD AT THE TIME OF THE OFFENSE.

On September 30, 2004 Sean Harstine pled guilty to several breaking and entering cases in Wilson County Superior Court. He received consecutive sentences resulting in a total sentence of more than one year and one month. (Appendix G). He received three (3) criminal history points. Counsel objected claiming that the convictions were outside the five-year period for scoring purposes because Harstine was only 17 years old when the offenses occurred. Counsel argued that in every other state in the country, Harstine would have been in juvenile court, and there would be a five-year look-back period as opposed to fifteen years. The District Court held that under the letter of the guidelines it was properly scored. Had petitioner prevailed in this argument, his criminal history points would have been 7, not 10,

his criminal history category would have been IV, not V, and his guideline range would have been 188 to 235 months, not 210 to 262 months.

Guideline § 4A1.1 (Appendix E) controls the points for prior sentences in order to compute a defendant's criminal history category. Depending upon various considerations, a defendant could receive 1, 2, or 3 points. Application note 1 states:

> "A sentence imposed for an offense committed prior to the defendant's eighteenth birthday is counted under this subsection only if it resulted from an adult conviction. See § 4A1.2(d)."

Guideline § 4A1.2 (Appendix F) outlines definitions and instructions for computing criminal history. Subsection (d) addresses offenses committed to prior to age eighteen, and provides as follows:

> "(d) OFFENSES COMMITTED PRIOR TO AGE EIGHTEEN
>
> (1) If the defendant was convicted as an adult and received a sentence of imprisonment exceeding one year and one month, add 3 points under § 4A1.1(a) for each such sentence.
>
> (2) In any other case,
>
> (A) add 2 points under § 4A1.1(b) for each adult or juvenile sentence to confinement of at least sixty days if the defendant was released from such confinement within five years of his commencement of the instant offense;
>
> (B) add 1 point under § 4A1.1(c) for each adult or juvenile sentence imposed within five years of the defendant's commencement of the instant offense not covered in (A)."

Section (e) of Guideline § 4A1.2 addresses the applicable time period. Subsection e (1) provides as follows:

> "(e) APPLICABLE TIME PERIOD
>
> (1) Any prior sentence of imprisonment exceeding one year and one month that was imposed within fifteen years of the defendant's commencement of the instant offense is counted. Also count any prior sentence of imprisonment exceeding one year and one month, whenever imposed, that resulted in the defendant being incarcerated during any part of such fifteen-year period."

Sean Harstine's prior convictions occurred outside the five-year look-back period for a juvenile sentence but within the fifteen-year look-back period for adult prior convictions. Therefore he received 3 criminal history points solely because he lived in North Carolina because the federal government and all other states considered individuals under 18 years of age to be juveniles.

The North Carolina Session Law that raised the juvenile age from 16 to 18 is entitled The 2017 Juvenile Justice Reinvestment Act. It became effective on December 1, 2019. The relevant statutes raising the age are N.C.G.S. § 7B-101 and N.C.G.S. § 7B-1501, reproduced herein as Appendix H and I.

At the time of briefing in the Fourth Circuit Court of Appeals, petitioner was aware of the Fourth Circuit decision in United States v. Allen, 446 F.3d 522 (4th Cir. 2006), where it found that the defendant's prior convictions at the age of 17 were adult convictions because they were in the North Carolina Superior Court. Understanding that the North Carolina Legislature had passed the above mentioned legislation going into effect on December 1, 2019, petitioner requested

the Fourth Circuit to re-visit its decision in Allen on this issue. Said request was declined. Sean Harstine contends that in declining to re-consider this issue, the Fourth Circuit failed to correctly analyze the procedures that occurred. It stated:

> "Harstine argues that, had he been charged as a juvenile, the offense would not have counted against him. However, although he regards as unfair the decision not to charge him as a juvenile, he does not dispute–and we conclude–that, under the pertinent Guideline, the court properly scored this offense. *See* U.S. Sentencing Guidelines Manual § 4A1.2(d)(1)(2018)." (Appendix A, p. 2).

It is respectfully urged that the above language indicates that the Fourth Circuit was of the opinion that the State of North Carolina had an option to charge Sean Harstine as a juvenile at the time of his offenses when he was 17 years old. That is not the case. All persons 16 years of age or older were charged as adults in North Carolina. If they were under 16 years of age and the State determined they should be charged as an adult, the case could be transferred from the district court to the superior court. See N.C.G.S. § 7B-2200. (Appendix I). The procedures have now been somewhat modified in North Carolina based upon raising the juvenile age from 16 to 18. See N.C.G.S. § 7B-2200.5. (Appendix J). Therefore the unfairness was not that Sean Harstine was not charged as a juvenile, because he could not be in North Carolina. The unfairness was that had his prior convictions been in federal court, or in any other state, he would not have been charged (at least not initially) as an adult.

Application note 7 to Guideline § 4A1.2 voices a concern of the Sentencing Commission and a desire to avoid disparities from jurisdiction to jurisdiction. It is repeated below.

> "Offenses Committed Prior to Age Eighteen. – Section 4A1.2(d) covers offenses committed prior to age eighteen. Attempting to count every juvenile adjudication would have the potential for creating large disparities due to the differential availability of records. Therefore, for offenses committed prior to age eighteen, only those that resulted in adult sentences of imprisonment exceeding one year and one month, or resulted in imposition of an adult or juvenile sentence or release from confinement on that sentence within five years of the defendant's commencement of the instant offense are counted. To avoid disparities from jurisdiction to jurisdiction in the age at which a defendant is considered a 'juvenile,' this provision applies to all offenses committed prior to age eighteen." (Appendix F).

Petitioner Sean Harstine respectfully contends that North Carolina's antiquated lower age of juveniles resulted in him receiving criminal history points that would not have been assigned had he lived in another state. This resulted in a higher criminal history category and a higher guideline range. He contends this disparity denies him equal protection of the laws as required by the Fourteenth Amendment of the United States Constitution. (Appendix K).

CONCLUSION

For the foregoing reasons, Petitioner Sean Jason Harstine respectfully requests that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Fourth Circuit affirming his conviction and sentence.

This the 5th day of October, 2020.

DUNN, PITTMAN, SKINNER & CUSHMAN, PLLC
Counsel for Petitioner Sean Jason Harstine

By: 

RUDOLPH A. ASHTON, III
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2020

****

SEAN JASON HARSTINE, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent

****

ENTRY OF APPEARANCE

and

CERTIFICATE OF SERVICE

****

I, Rudolph A. Ashton, III, a member of the North Carolina State Bar, having been appointed to represent the Petitioner in the United States Court of Appeals for the Fourth Circuit, pursuant to the provisions of the Criminal Justice Act, 18 U.S.C. § 3006A, hereby enter my appearance in this Court in respect to this Petition for a Writ of Certiorari.

I, Rudolph A. Ashton, III, do swear or declare that on this date, the 5th day of October, 2020, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached motion for leave to proceed *in forma pauperis* and petition for a writ of certiorari on each party to the above proceeding, or that party's counsel, and on every other person required to be served by depositing in an envelope containing the above documents in the United States mail properly addressed to each of them and

with first-class postage prepaid. The names and addresses of those served are as follows:

Jennifer P. May-Parker, AUSA
Office of the United States Attorney
Eastern District of North Carolina
150 Fayetteville Street, Suite 2100
Raleigh, NC 27601

Solicitor General of the United States
Room 5616, Department of Justice
950 Pennsylvania Ave., N.W.
Washington DC 20530-0001

This the 5th day of October, 2020.

Respectfully submitted,

RUDOLPH A. ASHTON, III
Panel Attorney,
Eastern District of North Carolina
N.C. State Bar No. 0125
Post Office Drawer 1389
New Bern, North Carolina 28563-1389
Telephone: (252) 633-3800
Facsimile: (252) 633-6669
Email: RAshton@dunnpittman.com

Subscribed and Sworn to Before Me

This the 5th day of October, 2020

TERESA K. LEWIS NOTARY PUBLIC CRAVEN COUNTY, NC

Notary Public

My Commission Expires: 3/19/2024

APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4384

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SEAN JASON HARSTINE,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:17-cr-00346-D-2)

Submitted: April 14, 2020 Decided: July 8, 2020

Before DIAZ and THACKER, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Rudolph A. Ashton, III, DUNN PITTMAN SKINNER & CUSHMAN, PLLC, New Bern, North Carolina, for Appellant. Robert J. Higdon, Jr., United States Attorney, Jennifer P. May-Parker, Assistant United States Attorney, Phillip A. Rubin, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Sean Jason Harstine appeals the 270-month sentence imposed following his guilty plea to various drug and firearm offenses. On appeal, he raises several challenges to the district court's application of the Sentencing Guidelines. Finding no error, we affirm.

Generally, "[w]e review sentences under a deferential abuse-of-discretion standard." *United States v. Dennings*, 922 F.3d 232, 235 (4th Cir. 2019) (internal quotation marks omitted). But "[o]n a challenge to a district court's application of the Guidelines, we review questions of law de novo and findings of fact for clear error." *United States v. Hawley*, 919 F.3d 252, 255 (4th Cir. 2019).

In calculating Harstine's criminal history score, the district court assigned 3 criminal history points for a North Carolina offense, committed when Harstine was 17 years old, for which he was convicted as an adult. Harstine argues that, had he been charged as a juvenile, the offense would not have counted against him. However, although he regards as unfair the decision not to charge him as a juvenile, he does not dispute—and we conclude—that, under the pertinent Guideline, the court properly scored this offense. *See* U.S. Sentencing Guidelines Manual § 4A1.2(d)(1) (2018).

Next, Harstine contends that, because the investigation into his drug trafficking conspiracy commenced a month after he finished serving a separate state sentence, the district court erroneously added two criminal history points for committing the instant offense while under a criminal justice sentence. *See* USSG 4A1.1(d). But the relevant question was when did the conspiracy occur, not when did the investigation begin, and

here, the record clearly contained evidence that the conspiracy overlapped with Harstine's state sentence. Thus, we reject this claim.

Turning to Harstine's offense level, "[w]e review the district court's calculation of the quantity of drugs attributable to a defendant for sentencing purposes for clear error. In so doing, we afford great deference to a district judge's credibility determinations and how the court may choose to weigh the evidence." *United States v. Williamson*, 953 F.3d 264, 272-73 (4th Cir. 2020) (citation and internal quotation marks omitted). In addition, a court imposing sentence may "consider any relevant information before it, including uncorroborated hearsay, provided that the information has sufficient indicia of reliability to support its accuracy." *United States v. Mondragon*, 860 F.3d 227, 233 (4th Cir. 2017) (internal quotation marks omitted).

Here, Harstine contests the district court's drug weight finding and application of enhancements for his role in the offense and maintaining a premises for purposes of distributing a controlled substance. *See* USSG §§ 2D1.1(b)(12), 3B1.1(b). At sentencing, the district court credited testimony from two law enforcement officers, who related information provided by two of Harstine's coconspirators. Based on evidence showing that Harstine arranged the logistics of drug transactions and directly exercised control over one of his associates, whom he used as a middleman between him and his customers, we conclude that the court properly applied the role-in-the-offense enhancement. *See United States v. Bartley*, 230 F.3d 667, 673-74 (4th Cir. 2000). And based on the court's finding that Harstine lived in a mobile home that he used both to package drugs and to serve, in effect, as a dispensary for his middleman, we agree with the court's decision to apply the

maintaining-a-premises enhancement. *See* USSG § 2D1.1 cmt. n.17. Finally, we discern no basis for disturbing the court's drug weight finding, which essentially amounted to a credibility determination to which we afford great deference.

Harstine also claims, for the first time on appeal, that the district court should have awarded him a one-level downward adjustment for acceptance of responsibility under USSG § 3E1.1(b). That guideline gives the government "discretion to determine whether the defendant's assistance has relieved it of preparing for trial" by "timely notif[ying] [it] of his intention to enter a plea of guilty." *United States v. Divens*, 650 F.3d 343, 346 (4th Cir. 2011) (cleaned up). Because Harstine did not cooperate with law enforcement and requested four continuances before pleading guilty, the government did not abuse its discretion in declining to move for the additional adjustment. *See* USSG § 3E1.1(b). Therefore, we discern no error, plain or otherwise. *See United States v. Muslim*, 944 F.3d 154, 167 (4th Cir. 2019) (providing standard of review for unpreserved Guidelines challenges).

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

FILED: July 8, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4384
(5:17-cr-00346-D-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

SEAN JASON HARSTINE

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

APPENDIX C

FILED: July 30, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4384
(5:17-cr-00346-D-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

SEAN JASON HARSTINE

Defendant - Appellant

MANDATE

The judgment of this court, entered July 8, 2020, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

APPENDIX D

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA
v.
SEAN JASON HARSTINE

JUDGMENT IN A CRIMINAL CASE

Case Number: 5:17-CR-346-2-D

USM Number: 64300-056

Curtis R. High
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1, 8, 10, 11 and 12 of the Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 846, 21 U.S.C. § 841(b)(1)(B)	Conspiracy to Distribute and Possess With Intent to Distribute 5 Grams or More of Methamphetamine and a Quantity of Heroin	12/5/2016	1

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/15/2019
Date of Imposition of Judgment

Signature of Judge

James C. Dever III, United States District Judge
Name and Title of Judge

5/15/2019
Date

DEFENDANT: SEAN JASON HARSTINE
CASE NUMBER: 5:17-CR-346-2-D

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C)	Distribution of a Quantity of Heroin and Aiding and Abetting	12/5/2016	8
21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C)	Possession With the Intent to Distribute a Quantity of Heroin and a Quantity of Methamphetamine	12/5/2016	10
21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C)	Possession With Intent to Distribute a Quantity of Methamphetamine and Aiding and Abetting	12/5/2016	11
18 U.S.C. § 924(c), 18 U.S.C. § 924(c)(1)(A)(i) and 18 U.S.C. § 2	Possession of a Firearm in Furtherance of a Drug Trafficking Crime and Aiding and Abetting	12/5/2016	12

DEFENDANT: SEAN JASON HARSTINE
CASE NUMBER: 5:17-CR-346-2-D

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Counts 1, 8, 10 and 11: 210 months per count, to be served concurrently
Count 12: 60 months, to be served consecutively to all other counts - (Total term: 270 months)

The court orders that the defendant provide support for all dependents while incarcerated.

☑ The court makes the following recommendations to the Bureau of Prisons:

The court recommends that the defendant receive intensive substance abuse treatment and vocational and educational training opportunities. The court recommends that the defendant receive a mental health assessment and mental health treatment while incarcerated. The court recommends that he be housed separately from all co-defendants, to include: Brian Allen Gardner and James Madison Parker.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: SEAN JASON HARSTINE
CASE NUMBER: 5:17-CR-346-2-D

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Counts 1 and 12: 5 years per count and a term of 3 years on counts 8, 10, and 11, all such terms shall run concurrently - (Total term: 5 years)

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: SEAN JASON HARSTINE
CASE NUMBER: 5:17-CR-346-2-D

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: SEAN JASON HARSTINE
CASE NUMBER: 5:17-CR-346-2-D

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

The defendant shall not incur new credit charges or open additional lines of credit without approval of the probation office.

The defendant shall provide the probation office with access to any requested financial information.

The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.

The defendant shall participate in a program of mental health treatment, as directed by the probation office.

The defendant shall consent to a warrantless search by a United States probation officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises, including any vehicle, to determine compliance with the conditions of this judgment.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall support his dependent(s).

DEFENDANT: SEAN JASON HARSTINE
CASE NUMBER: 5:17-CR-346-2-D

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 500.00	$	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: SEAN JASON HARSTINE
CASE NUMBER: 5:17-CR-346-2-D

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

The special assessment in the amount of $500.00 shall be due in full immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:
The defendant shall forfeit to the United States the defendant's interest in the property specified in the Order of Forfeiture entered on May 15, 2019.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

CHAPTER FOUR

CRIMINAL HISTORY AND CRIMINAL LIVELIHOOD

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.

The specific factors included in §4A1.1 and §4A1.3 are consistent with the extant empirical research assessing correlates of recidivism and patterns of career criminal behavior. While empirical research has shown that other factors are correlated highly with the likelihood of recidivism, *e.g.*, age and drug abuse, for policy reasons they were not included here at this time. The Commission has made no definitive judgment as to the reliability of the existing data. However, the Commission will review additional data insofar as they become available in the future.

Historical Note	Effective November 1, 1987.

§4A1.1. Criminal History Category

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

(a) Add 3 points for each prior sentence of imprisonment exceeding one year and one month.

(b) Add 2 points for each prior sentence of imprisonment of at least sixty days not counted in (a).

(c) Add 1 point for each prior sentence not counted in (a) or (b), up to a total of 4 points for this subsection.

(d) Add **2** points if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.

(e) 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.

Commentary

The total criminal history points from §4A1.1 determine the criminal history category (I–VI) in the Sentencing Table in Chapter Five, Part A. The definitions and instructions in §4A1.2 govern the computation of the criminal history points. Therefore, §§4A1.1 and 4A1.2 must be read together. The following notes highlight the interaction of §§4A1.1 and 4A1.2.

Application Notes:

1. **§4A1.1(a).** Three points are added for each prior sentence of imprisonment exceeding one year and one month. There is no limit to the number of points that may be counted under this subsection. The term "***prior sentence***" is defined at §4A1.2(a). The term "***sentence of imprisonment***" is defined at §4A1.2(b). Where a prior sentence of imprisonment resulted from a revocation of probation, parole, or a similar form of release, *see* §4A1.2(k).

   Certain prior sentences are not counted or are counted only under certain conditions:

   A sentence imposed more than fifteen years prior to the defendant's commencement of the instant offense is not counted unless the defendant's incarceration extended into this fifteen-year period. *See* §4A1.2(e).

   A sentence imposed for an offense committed prior to the defendant's eighteenth birthday is counted under this subsection only if it resulted from an adult conviction. *See* §4A1.2(d).

   A sentence for a foreign conviction, a conviction that has been expunged, or an invalid conviction is not counted. *See* §4A1.2(h) and (j) and the Commentary to §4A1.2.

2. **§4A1.1(b).** Two points are added for each prior sentence of imprisonment of at least sixty days not counted in §4A1.1(a). There is no limit to the number of points that may be counted under this subsection. The term "***prior sentence***" is defined at §4A1.2(a). The term "***sentence of imprisonment***" is defined at §4A1.2(b). Where a prior sentence of imprisonment resulted from a revocation of probation, parole, or a similar form of release, *see* §4A1.2(k).

   Certain prior sentences are not counted or are counted only under certain conditions:

   A sentence imposed more than ten years prior to the defendant's commencement of the instant offense is not counted. *See* §4A1.2(e).

   An adult or juvenile sentence imposed for an offense committed prior to the defendant's eighteenth birthday is counted only if confinement resulting from such sentence extended into the five-year period preceding the defendant's commencement of the instant offense. *See* §4A1.2(d).

   Sentences for certain specified non-felony offenses are never counted. *See* §4A1.2(c)(2).

A sentence for a foreign conviction or a tribal court conviction, an expunged conviction, or an invalid conviction is not counted. *See* §4A1.2(h), (i), (j), and the Commentary to §4A1.2.

A military sentence is counted only if imposed by a general or special court-martial. *See* §4A1.2(g).

3. **§4A1.1(c).** One point is added for each prior sentence not counted under §4A1.1(a) or (b). A maximum of four points may be counted under this subsection. The term "***prior sentence***" is defined at §4A1.2(a).

Certain prior sentences are not counted or are counted only under certain conditions:

A sentence imposed more than ten years prior to the defendant's commencement of the instant offense is not counted. *See* §4A1.2(e).

An adult or juvenile sentence imposed for an offense committed prior to the defendant's eighteenth birthday is counted only if imposed within five years of the defendant's commencement of the current offense. *See* §4A1.2(d).

Sentences for certain specified non-felony offenses are counted only if they meet certain requirements. *See* §4A1.2(c)(1).

Sentences for certain specified non-felony offenses are never counted. *See* §4A1.2(c)(2).

A diversionary disposition is counted only where there is a finding or admission of guilt in a judicial proceeding. *See* §4A1.2(f).

A sentence for a foreign conviction, a tribal court conviction, an expunged conviction, or an invalid conviction, is not counted. *See* §4A1.2(h), (i), (j), and the Commentary to §4A1.2.

A military sentence is counted only if imposed by a general or special court-martial. *See* §4A1.2(g).

4. **§4A1.1(d).** Two points are added if the defendant committed any part of the instant offense (*i.e.*, any relevant conduct) while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status. Failure to report for service of a sentence of imprisonment is to be treated as an escape from such sentence. *See* §4A1.2(n). For the purposes of this subsection, a "***criminal justice sentence***" means a sentence countable under §4A1.2 (Definitions and Instructions for Computing Criminal History) having a custodial or supervisory component, although active supervision is not required for this subsection to apply. For example, a term of unsupervised probation would be included; but a sentence to pay a fine, by itself, would not be included. A defendant who commits the instant offense while a violation warrant from a prior sentence is outstanding (*e.g.*, a probation, parole, or supervised release violation warrant) shall be deemed to be under a criminal justice sentence for the purposes of this provision if that sentence is otherwise countable, even if that sentence would have expired absent such warrant. *See* §4A1.2(m).

5. **§4A1.1(e).** In a case in which the defendant received two or more prior sentences as a result of convictions for crimes of violence that are treated as a single sentence (*see* §4A1.2(a)(2)), one point is added under §4A1.1(e) for each such sentence that did not result in any additional points under §4A1.1(a), (b), or (c). A total of up to 3 points may be added under §4A1.1(e). For purposes of this guideline, "***crime of violence***" has the meaning given that term in §4B1.2(a). *See* §4A1.2(p).

For example, a defendant's criminal history includes two robbery convictions for offenses committed on different occasions. The sentences for these offenses were imposed on the same day and are treated as a single prior sentence. *See* §4A1.2(a)(2). If the defendant received a five-year sentence of imprisonment for one robbery and a four-year sentence of imprisonment for the other robbery (consecutively or concurrently), a total of 3 points is added under §4A1.1(a). An additional point is added under §4A1.1(e) because the second sentence did not result in any additional point(s) (under §4A1.1(a), (b), or (c)). In contrast, if the defendant received a one-year sentence of imprisonment for one robbery and a nine-month consecutive sentence of imprisonment for the other robbery, a total of 3 points also is added under §4A1.1(a) (a one-year sentence of imprisonment and a consecutive nine-month sentence of imprisonment are treated as a combined one-year-nine-month sentence of imprisonment). But no additional point is added under §4A1.1(e) because the sentence for the second robbery already resulted in an additional point under §4A1.1(a). Without the second sentence, the defendant would only have received two points under §4A1.1(b) for the one-year sentence of imprisonment.

Background: Prior convictions may represent convictions in the federal system, fifty state systems, the District of Columbia, territories, and foreign, tribal, and military courts. There are jurisdictional variations in offense definitions, sentencing structures, and manner of sentence pronouncement. To minimize problems with imperfect measures of past crime seriousness, criminal history categories are based on the maximum term imposed in previous sentences rather than on other measures, such as whether the conviction was designated a felony or misdemeanor. In recognition of the imperfection of this measure however, §4A1.3 authorizes the court to depart from the otherwise applicable criminal history category in certain circumstances.

Subsections (a), (b), and (c) of §4A1.1 distinguish confinement sentences longer than one year and one month, shorter confinement sentences of at least sixty days, and all other sentences, such as confinement sentences of less than sixty days, probation, fines, and residency in a halfway house.

Section 4A1.1(d) adds two points if the defendant was under a criminal justice sentence during any part of the instant offense.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 259–261); November 1, 1991 (amendments 381 and 382); October 27, 2003 (amendment 651); November 1, 2007 (amendment 709); November 1, 2010 (amendment 742); November 1, 2013 (amendment 777); November 1, 2015 (amendment 795).

§4A1.2. Definitions and Instructions for Computing Criminal History

(a) PRIOR SENTENCE

(1) The term "prior sentence" means any sentence previously imposed upon adjudication of guilt, whether by guilty plea, trial, or plea of *nolo contendere*, for conduct not part of the instant offense.

(2) If the defendant has multiple prior sentences, determine whether those sentences are counted separately or treated as a single sentence. Prior sentences always are counted separately if the sentences were imposed for offenses that were separated by an intervening arrest (*i.e.*, the defendant is arrested for the first offense prior to committing

the second offense). If there is 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. Treat any prior sentence covered by (A) or (B) as a single sentence. *See also* §4A1.1(e).

For purposes of applying §4A1.1(a), (b), and (c), if prior sentences are treated as a single sentence, use the longest sentence of imprisonment if concurrent sentences were imposed. If consecutive sentences were imposed, use the aggregate sentence of imprisonment.

(3) A conviction for which the imposition or execution of sentence was totally suspended or stayed shall be counted as a prior sentence under §4A1.1(c).

(4) Where a defendant has been convicted of an offense, but not yet sentenced, such conviction shall be counted as if it constituted a prior sentence under §4A1.1(c) if a sentence resulting from that conviction otherwise would be countable. In the case of a conviction for an offense set forth in §4A1.2(c)(1), apply this provision only where the sentence for such offense would be countable regardless of type or length.

"Convicted of an offense," for the purposes of this provision, means that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of *nolo contendere*.

(b) SENTENCE OF IMPRISONMENT DEFINED

(1) The term "sentence of imprisonment" means a sentence of incarceration and refers to the maximum sentence imposed.

(2) If part of a sentence of imprisonment was suspended, "sentence of imprisonment" refers only to the portion that was not suspended.

(c) SENTENCES COUNTED AND EXCLUDED

Sentences for all felony offenses are counted. Sentences for misdemeanor and petty offenses are counted, except as follows:

(1) 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:

Careless or reckless driving
Contempt of court

Disorderly conduct or disturbing the peace
Driving without a license or with a revoked or suspended license
False information to a police officer
Gambling
Hindering or failure to obey a police officer
Insufficient funds check
Leaving the scene of an accident
Non-support
Prostitution
Resisting arrest
Trespassing

(2) Sentences for the following prior offenses and offenses similar to them, by whatever name they are known, are never counted:

Fish and game violations
Hitchhiking
Juvenile status offenses and truancy
Local ordinance violations (except those violations that are also violations under state criminal law)
Loitering
Minor traffic infractions (*e.g.*, speeding)
Public intoxication
Vagrancy.

(d) OFFENSES COMMITTED PRIOR TO AGE EIGHTEEN

(1) If the defendant was convicted as an adult and received a sentence of imprisonment exceeding one year and one month, add 3 points under §4A1.1(a) for each such sentence.

(2) In any other case,

(A) add 2 points under §4A1.1(b) for each adult or juvenile sentence to confinement of at least sixty days if the defendant was released from such confinement within five years of his commencement of the instant offense;

(B) add 1 point under §4A1.1(c) for each adult or juvenile sentence imposed within five years of the defendant's commencement of the instant offense not covered in (A).

(e) APPLICABLE TIME PERIOD

(1) Any prior sentence of imprisonment exceeding one year and one month that was imposed within fifteen years of the defendant's com-

mencement of the instant offense is counted. Also count any prior sentence of imprisonment exceeding one year and one month, whenever imposed, that resulted in the defendant being incarcerated during any part of such fifteen-year period.

(2) Any other prior sentence that was imposed within ten years of the defendant's commencement of the instant offense is counted.

(3) Any prior sentence not within the time periods specified above is not counted.

(4) The applicable time period for certain sentences resulting from offenses committed prior to age eighteen is governed by §4A1.2(d)(2).

(f) DIVERSIONARY DISPOSITIONS

Diversion from the judicial process without a finding of guilt (*e.g.*, deferred prosecution) is not counted. A diversionary disposition resulting from a finding or admission of guilt, or a plea of *nolo contendere*, in a judicial proceeding is counted as a sentence under §4A1.1(c) even if a conviction is not formally entered, except that diversion from juvenile court is not counted.

(g) MILITARY SENTENCES

Sentences resulting from military offenses are counted if imposed by a general or special court-martial. Sentences imposed by a summary court-martial or Article 15 proceeding are not counted.

(h) FOREIGN SENTENCES

Sentences resulting from foreign convictions are not counted, but may be considered under §4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)).

(i) TRIBAL COURT SENTENCES

Sentences resulting from tribal court convictions are not counted, but may be considered under §4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)).

(j) EXPUNGED CONVICTIONS

Sentences for expunged convictions are not counted, but may be considered under §4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)).

(k) REVOCATIONS OF PROBATION, PAROLE, MANDATORY RELEASE, OR SUPERVISED RELEASE

(1) In the case of a prior revocation of probation, parole, supervised release, special parole, or mandatory release, add the original term of imprisonment to any term of imprisonment imposed upon revocation. The resulting total is used to compute the criminal history points for §4A1.1(a), (b), or (c), as applicable.

(2) Revocation of probation, parole, supervised release, special parole, or mandatory release may affect the time period under which certain sentences are counted as provided in §4A1.2(d)(2) and (e). For the purposes of determining the applicable time period, use the following: (A) in the case of an adult term of imprisonment totaling more than one year and one month, the date of last release from incarceration on such sentence (*see* §4A1.2(e)(1)); (B) in the case of any other confinement sentence for an offense committed prior to the defendant's eighteenth birthday, the date of the defendant's last release from confinement on such sentence (*see* §4A1.2(d)(2)(A)); and (C) in any other case, the date of the original sentence (*see* §4A1.2(d)(2)(B) and (e)(2)).

(l) SENTENCES ON APPEAL

Prior sentences under appeal are counted except as expressly provided below. In the case of a prior sentence, the execution of which has been stayed pending appeal, §4A1.1(a), (b), (c), (d), and (e) shall apply as if the execution of such sentence had not been stayed.

(m) EFFECT OF A VIOLATION WARRANT

For the purposes of §4A1.1(d), a defendant who commits the instant offense while a violation warrant from a prior sentence is outstanding (*e.g.*, a probation, parole, or supervised release violation warrant) shall be deemed to be under a criminal justice sentence if that sentence is otherwise countable, even if that sentence would have expired absent such warrant.

(n) FAILURE TO REPORT FOR SERVICE OF SENTENCE OF IMPRISONMENT

For the purposes of §4A1.1(d), failure to report for service of a sentence of imprisonment shall be treated as an escape from such sentence.

(o) FELONY OFFENSE

For the purposes of §4A1.2(c), a "felony offense" means any federal, state, or local offense punishable by death or a term of imprisonment exceeding one year, regardless of the actual sentence imposed.

(p) CRIME OF VIOLENCE DEFINED

For the purposes of §4A1.1(e), the definition of "crime of violence" is that set forth in §4B1.2(a).

Commentary

Application Notes:

1. **Prior Sentence.**—"*Prior sentence*" means a sentence imposed prior to sentencing on the instant offense, other than a sentence for conduct that is part of the instant offense. *See* §4A1.2(a). A sentence imposed after the defendant's commencement of the instant offense, but prior to sentencing on the instant offense, is a prior sentence if it was for conduct other than conduct that was part of the instant offense. Conduct that is part of the instant offense means conduct that is relevant conduct to the instant offense under the provisions of §1B1.3 (Relevant Conduct).

   Under §4A1.2(a)(4), a conviction for which the defendant has not yet been sentenced is treated as if it were a prior sentence under §4A1.1(c) if a sentence resulting from such conviction otherwise would have been counted. In the case of an offense set forth in §4A1.2(c)(1) (which lists certain misdemeanor and petty offenses), a conviction for which the defendant has not yet been sentenced is treated as if it were a prior sentence under §4A1.2(a)(4) only where the offense is similar to the instant offense (because sentences for other offenses set forth in §4A1.2(c)(1) are counted only if they are of a specified type and length).

2. **Sentence of Imprisonment.**—To qualify as a sentence of imprisonment, the defendant must have actually served a period of imprisonment on such sentence (or, if the defendant escaped, would have served time). *See* §4A1.2(a)(3) and (b)(2). For the purposes of applying §4A1.1(a), (b), or (c), the length of a sentence of imprisonment is the stated maximum (*e.g.*, in the case of a determinate sentence of five years, the stated maximum is five years; in the case of an indeterminate sentence of one to five years, the stated maximum is five years; in the case of an indeterminate sentence for a term not to exceed five years, the stated maximum is five years; in the case of an indeterminate sentence for a term not to exceed the defendant's twenty-first birthday, the stated maximum is the amount of time in pre-trial detention plus the amount of time between the date of sentence and the defendant's twenty-first birthday). That is, criminal history points are based on the sentence pronounced, not the length of time actually served. *See* §4A1.2(b)(1) and (2). A sentence of probation is to be treated as a sentence under §4A1.1(c) unless a condition of probation requiring imprisonment of at least sixty days was imposed.

3. **Application of "Single Sentence" Rule (Subsection (a)(2)).**—

   (A) **Predicate Offenses.**—In some cases, multiple prior sentences are treated as a single sentence for purposes of calculating the criminal history score under §4A1.1(a), (b), and (c). However, for purposes of determining predicate offenses, a prior sentence included in the single sentence should be treated as if it received criminal history points, if it independently would have received criminal history points. Therefore, an individual prior sentence may serve as a predicate under the career offender guideline (*see* §4B1.2(c)) or other guidelines with predicate offenses, if it independently would have received criminal history points. However, because predicate offenses may be used only if they are counted "separately" from each other (*see* §4B1.2(c)), no more than one prior sentence in a given single sentence may be used as a predicate offense.

   For example, a defendant's criminal history includes one robbery conviction and one theft conviction. The sentences for these offenses were imposed on the same day, eight years ago, and are treated as a single sentence under §4A1.2(a)(2). If the defendant received a one-

year sentence of imprisonment for the robbery and a two-year sentence of imprisonment for the theft, to be served concurrently, a total of 3 points is added under §4A1.1(a). Because this particular robbery met the definition of a felony crime of violence and independently would have received 2 criminal history points under §4A1.1(b), it may serve as a predicate under the career offender guideline.

Note, however, that if the sentences in the example above were imposed thirteen years ago, the robbery independently would have received no criminal history points under §4A1.1(b), because it was not imposed within ten years of the defendant's commencement of the instant offense. *See* §4A1.2(e)(2). Accordingly, it may not serve as a predicate under the career offender guideline.

(B) **Upward Departure Provision.**—Treating multiple prior sentences as a single sentence may result in a criminal history score that underrepresents the seriousness of the defendant's criminal history and the danger that the defendant presents to the public. In such a case, an upward departure may be warranted. For example, if a defendant was convicted of a number of serious non-violent offenses committed on different occasions, and the resulting sentences were treated as a single sentence because either the sentences resulted from offenses contained in the same charging instrument or the defendant was sentenced for these offenses on the same day, the assignment of a single set of points may not adequately reflect the seriousness of the defendant's criminal history or the frequency with which the defendant has committed crimes.

4. **Sentences Imposed in the Alternative.**—A sentence which specifies a fine or other non-incarcerative disposition as an alternative to a term of imprisonment (*e.g.*, $1,000 fine or ninety days' imprisonment) is treated as a non-imprisonment sentence.

5. **Sentences for Driving While Intoxicated or Under the Influence.**—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.

6. **Reversed, Vacated, or Invalidated Convictions.**—Sentences resulting from convictions that (A) have been reversed or vacated because of errors of law or because of subsequently discovered evidence exonerating the defendant, or (B) have been ruled constitutionally invalid in a prior case are not to be counted. With respect to the current sentencing proceeding, this guideline and commentary do not confer upon the defendant any right to attack collaterally a prior conviction or sentence beyond any such rights otherwise recognized in law (*e.g.*, 21 U.S.C. § 851 expressly provides that a defendant may collaterally attack certain prior convictions).

Nonetheless, the criminal conduct underlying any conviction that is not counted in the criminal history score may be considered pursuant to §4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)).

7. **Offenses Committed Prior to Age Eighteen.**—Section 4A1.2(d) covers offenses committed prior to age eighteen. Attempting to count every juvenile adjudication would have the potential for creating large disparities due to the differential availability of records. Therefore, for offenses committed prior to age eighteen, only those that resulted in adult sentences of imprisonment exceeding one year and one month, or resulted in imposition of an adult or juvenile sentence or release from confinement on that sentence within five years of the defendant's commencement of the instant offense are counted. To avoid disparities from jurisdiction to jurisdiction in the age at which a defendant is considered a "juvenile," this provision applies to all offenses committed prior to age eighteen.

8. **Applicable Time Period.**—Section 4A1.2(d)(2) and (e) establishes the time period within which prior sentences are counted. As used in §4A1.2(d)(2) and (e), the term "***commencement of the instant offense***" includes any relevant conduct. *See* §1B1.3 (Relevant Conduct). If the court finds that a sentence imposed outside this time period is evidence of similar, or serious dissimilar, criminal conduct, the court may consider this information in determining whether an upward departure is warranted under §4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)).

9. **Diversionary Dispositions.**—Section 4A1.2(f) requires counting prior adult diversionary dispositions if they involved a judicial determination of guilt or an admission of guilt in open court. This reflects a policy that defendants who receive the benefit of a rehabilitative sentence and continue to commit crimes should not be treated with further leniency.

10. **Convictions Set Aside or Defendant Pardoned.**—A number of jurisdictions have various procedures pursuant to which previous convictions may be set aside or the defendant may be pardoned for reasons unrelated to innocence or errors of law, *e.g.*, in order to restore civil rights or to remove the stigma associated with a criminal conviction. Sentences resulting from such convictions are to be counted. However, expunged convictions are not counted. §4A1.2(j).

11. **Revocations to be Considered.**—Section 4A1.2(k) covers revocations of probation and other conditional sentences where the original term of imprisonment imposed, if any, did not exceed one year and one month. Rather than count the original sentence and the resentence after revocation as separate sentences, the sentence given upon revocation should be added to the original sentence of imprisonment, if any, and the total should be counted as if it were one sentence. By this approach, no more than three points will be assessed for a single conviction, even if probation or conditional release was subsequently revoked. If the sentence originally imposed, the sentence imposed upon revocation, or the total of both sentences exceeded one year and one month, the maximum three points would be assigned. If, however, at the time of revocation another sentence was imposed for a new criminal conviction, that conviction would be computed separately from the sentence imposed for the revocation.

Where a revocation applies to multiple sentences, and such sentences are counted separately under §4A1.2(a)(2), add the term of imprisonment imposed upon revocation to the sentence that will result in the greatest increase in criminal history points. **Example:** A defendant was serving two probationary sentences, each counted separately under §4A1.2(a)(2); probation was revoked on both sentences as a result of the same violation conduct; and the defendant was sentenced to a total of 45 days of imprisonment. If one sentence had been a "straight" probationary sentence and the other had been a probationary sentence that had required service of 15 days of imprisonment, the revocation term of imprisonment (45 days) would be added to the probationary sentence that had the 15-day term of imprisonment. This would result in a total of 2 criminal history points under §4A1.1(b) (for the combined 60-day term of imprisonment) and 1 criminal history point under §4A1.1(c) (for the other probationary sentence).

12. **Application of Subsection (c).—**

(A) **In General.**—In determining whether an unlisted offense is similar to an offense listed in subsection (c)(1) or (c)(2), the court should use a common sense approach that includes consideration of relevant factors such as (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.

(B) **Local Ordinance Violations.**—A number of local jurisdictions have enacted ordinances covering certain offenses (*e.g.*, larceny and assault misdemeanors) that are also violations of state criminal law. This enables a local court (*e.g.*, a municipal court) to exercise jurisdiction over such offenses. Such offenses are excluded from the definition of local ordinance violations in §4A1.2(c)(2) and, therefore, sentences for such offenses are to be treated as if the defendant had been convicted under state law.

(C) **Insufficient Funds Check.**—"*Insufficient funds check*," as used in §4A1.2(c)(1), does not include any conviction establishing that the defendant used a false name or non-existent account.

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

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 262–265); November 1, 1990 (amendments 352 and 353); November 1, 1991 (amendments 381 and 382); November 1, 1992 (amendment 472); November 1, 1998 (amendment 493); November 1, 2007 (amendment 709); November 1, 2010 (amendment 742); November 1, 2011 (amendment 758); November 1, 2012 (amendment 766); November 1, 2013 (amendment 777); November 1, 2015 (amendment 795); November 1, 2018 (amendment 813).

§4A1.3. Departures Based on Inadequacy of Criminal History Category (Policy Statement)

(a) UPWARD DEPARTURES.—

(1) STANDARD FOR UPWARD DEPARTURE.—If reliable information indicates that the defendant's criminal history category substantially underrepresents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, an upward departure may be warranted.

(2) TYPES OF INFORMATION FORMING THE BASIS FOR UPWARD DEPARTURE.—The information described in subsection (a)(1) may include information concerning the following:

(A) Prior sentence(s) not used in computing the criminal history category (*e.g.*, sentences for foreign and tribal convictions).

(B) Prior sentence(s) of substantially more than one year imposed as a result of independent crimes committed on different occasions.

(C) Prior similar misconduct established by a civil adjudication or by a failure to comply with an administrative order.

(D) Whether the defendant was pending trial or sentencing on another charge at the time of the instant offense.

25.	02/24/2004 (Age 17)	Breaking and Entering (F) 04CRS51094 Wilson County Superior Court, Wilson, NC	09/30/2004: Pled guilty 8 to 10 months custody, consecutive to 04CRS51091 10/01/2005: Sentence expired	4A1.2(a)(2)	0

On February 21, 2004, Harstine broke into a house. While inside, he allegedly stole a jewelry box, various items of jewelry, medication, VHS videos and a pillow case, all valued at $3,970. Additionally, he allegedly damaged a window frame belonging to the homeowner. The defendant was originally charged with Second Degree Burglary, but pled guilty to the lesser charge. Companion charges of Larceny After Breaking and Entering and Injury to Real Property (04CRS51094) and Second Degree Burglary, Larceny After Breaking and Entering, and Injury to Real Property (04CRS51095) were dismissed. See 04CRS51091 for Institutional Adjustment.

26.	02/24/2004 (Age 17)	Breaking and Entering (F) 04CRS51091 Wilson County Superior Court, Wilson, NC	09/30/2004: Pled guilty 8 to 10 months custody 01/07/2005: Sentence expired	4A1.2(a)(2)	0

On February 17, 2004, Harstine broke into a house. While inside, he allegedly stole a camera, MP3 player, and assorted movies, all valued at $425. The defendant was originally charged with Second Degree Burglary, but pled guilty to the lesser charge. A companion charge of Larceny After Breaking and Entering was dismissed.

Institutional Adjustment: The defendant incurred six disciplinary infractions while incarcerated; however, the details of the infractions are unknown.

27.	02/24/2004 (Age 17)	Breaking and Entering (F) 04CRS51096 Wilson County Superior Court, Wilson, NC	09/30/2004: Pled guilty 8 to 10 months custody, consecutive to 04CRS51094 05/29/2006: Sentence expired	4A1.1(a) 4A1.2(a)(2) 4:1.2(d)(1)	3

On February 16, 2004, Harstine broke into a house. While inside, he allegedly stole a jewelry box and various items of jewelry, all valued at $6,815. Additionally, he allegedly damaged a window screen belonging to the homeowner. The defendant was originally charged with Second Degree Burglary, but pled guilty to the lesser charge. Companion charges of Larceny After Breaking and Entering and Injury to Real Property were dismissed. See 04CRS51091 for Institutional Adjustment.

28.	05/10/2004 (Age 17)	Breaking and Entering (F) 04CRS52542 Wilson County Superior Court, Wilson, NC	09/30/2004: Pled guilty 8 to 10 months custody, consecutive to 04CRS51096 01/24/2007: Discharged	4A1.2(a)(2)	0

On April 28, 2004, Harstine broke into a house. While inside, he allegedly stole assorted movies valued at $495. A companion charge of Larceny After Breaking and Entering was dismissed. See 04CRS51091 for Institutional Adjustment.

APPENDIX H

§ 7B-101. Definitions.

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles. - Any juvenile less than 18 years of age (i) who is found to be a minor victim of human trafficking under G.S. 14-43.15 or (ii) whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree forcible rape, as provided in G.S. 14-27.21; second-degree forcible rape as provided in G.S. 14-27.22; statutory rape of a child by an adult as provided in G.S. 14-27.23; first-degree statutory rape as provided in G.S. 14-27.24; first-degree forcible sex offense as provided in G.S. 14-27.26; second-degree forcible sex offense as provided in G.S. 14-27.27; statutory sexual offense with a child by an adult as provided in G.S. 14-27.28; first-degree statutory sexual offense as provided in G.S. 14-27.29; sexual activity by a substitute parent or custodian as provided in G.S. 14-27.31; sexual activity with a student as provided in G.S. 14-27.32; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-205.3(b); and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others;

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile; or

g. Commits or allows to be committed an offense under G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) against the child.

(2) Repealed by Session Laws 2015-136, s. 1, effective October 1, 2015, and applicable to actions filed or pending on or after that date.

(3) Caretaker. - Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential

setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

(4) Clerk. - Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(5) Repealed by Session Laws 2013-129, s. 1, effective October 1, 2013, and applicable to actions filed or pending on or after that date.

(6) Court. - The district court division of the General Court of Justice.

(7) Court of competent jurisdiction. - A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(7a) Criminal history. - A local, State, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, involving violence against a person.

(8) Custodian. - The person or agency that has been awarded legal custody of a juvenile by a court.

(8a) Department. - Each county's child welfare agency. Unless the context clearly implies otherwise, when used in this Subchapter, "department" or "department of social services" shall refer to the county agency providing child welfare services, regardless of the name of the agency or whether the county has consolidated human services, pursuant to G.S. 153A-77 and shall include a regional social services department created pursuant to Part 2B of Article 1 of Chapter 108A of the General Statutes.

(9) Dependent juvenile. - A juvenile in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement.

(10) Director. - The director of the department of social services in the county in which the juvenile resides or is found, or the director's representative as authorized in G.S. 108A-14.

(11) District. - Any district court district as established by G.S. 7A-133.

(11a) Family assessment response. - A response to selected reports of child neglect and dependency as determined by the Director using a family-centered approach that is protection and prevention oriented and that evaluates the strengths and needs of the juvenile's family, as well as the condition of the juvenile.

(11b) Investigative assessment response. - A response to reports of child abuse and selected reports of child neglect and dependency as determined by the Director using a formal information gathering process to determine whether a juvenile is abused, neglected, or dependent.

(12) Judge. - Any district court judge.

(13) Judicial district. - Any district court district as established by G.S. 7A-133.

(14) Juvenile. - A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the Armed Forces of the United States.

(15) Neglected juvenile. - Any juvenile less than 18 years of age (i) who is found to be a minor victim of human trafficking under G.S. 14-43.15 or (ii) whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or the custody of whom has been unlawfully transferred under G.S. 14-321.2; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

(15a) Nonrelative kin. - An individual having a substantial relationship with the juvenile. In the case of a juvenile member of a State-recognized tribe as set forth in G.S. 143B-407(a), nonrelative kin also includes any member of a State-recognized tribe or a member of a federally recognized tribe, whether or not there is a substantial relationship with the juvenile.

(16) Petitioner. - The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(17) Prosecutor. - The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(18) Reasonable efforts. - The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

(18a) Responsible individual. - A parent, guardian, custodian, caretaker, or individual responsible for subjecting a juvenile to human trafficking under G.S. 14-43.11, 14-43.12, or 14-43.13, who abuses or seriously neglects a juvenile.

(18b) Return home or reunification. - Placement of the juvenile in the home of either parent or placement of the juvenile in the home of a guardian or custodian from whose home the child was removed by court order.

(19) Safe home. - A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

(19a) Serious neglect. - Conduct, behavior, or inaction of the juvenile's parent, guardian, custodian, or caretaker that evidences a disregard of consequences of such magnitude that the conduct, behavior, or inaction constitutes an unequivocal danger to the juvenile's health, welfare, or safety, but does not constitute abuse.

(20) Repealed by Session Laws 2013-129, s. 1, effective October 1, 2013, and applicable to actions filed or pending on or after that date.

(21) Substantial evidence. - Relevant evidence a reasonable mind would accept as adequate to support a conclusion.

(22) Working day. - Any day other than a Saturday, Sunday, or a legal holiday when the courthouse is closed for transactions.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified. (1979, c. 815, s. 1; 1981, c. 336; c. 359, s. 2; c. 469, ss. 1-3; c. 716, s. 1; 1985, c. 648; c. 757, s. 156(q); 1985 (Reg. Sess., 1986), c. 852, s. 16; 1987, c. 162; c. 695; 1987 (Reg. Sess., 1988), c. 1037, ss. 36, 37; 1989 (Reg. Sess., 1990), c. 815, s. 1; 1991, c. 258, s. 3; c. 273, s. 11; 1991 (Reg. Sess., 1992), c. 1030, s. 3; 1993, c. 324, s. 1; c. 516, ss. 1-3; 1997-113, s. 1; 1997-390, s. 3; 1997-390, s. 3.2; 1997-443, s. 11A.118(a); 1997-506, s. 30; 1998-202, s. 6; 1998-229, ss. 1, 18; 1999-190, s. 1; 1999-318, s. 1; 1999-456, s. 60; 2005-55, s. 1; 2005-399, s. 1; 2009-38, s. 1; 2010-90, ss. 1, 2; 2011-183, s. 2; 2012-153, s. 2; 2013-129, s. 1; 2013-368, s. 16; 2015-123, s. 1; 2015-136, s. 1; 2015-181, s. 21; 2016-94, s. 12C.1(d); 2016-115, s. 3; 2017-41, s. 4.3; 2018-68, s. 8.1(a), (b); 2018-75, s. 5(a); 2018-145, s. 11(d); 2019-33, s. 1.)

APPENDIX I

§ 7B-1501. Definitions.

In this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings. The singular includes the plural, unless otherwise specified:

(1) Chief court counselor. - The person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.

(2) Clerk. - Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(3) Community-based program. - A program providing nonresidential or residential treatment to a juvenile under the jurisdiction of the juvenile court in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(4) Court. - The district court division of the General Court of Justice.

(5) Repealed by Session Laws 2001-490, s. 2.1, effective June 30, 2001.

(6) Custodian. - The person or agency that has been awarded legal custody of a juvenile by a court.

(7) Delinquent juvenile. -

a. Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws, or who commits indirect contempt by a juvenile as defined in G.S. 5A-31.

b. Any juvenile who, while less than 18 years of age but at least 16 years of age, commits a crime or an infraction under State law or under an ordinance of local government, excluding all violations of the motor vehicle laws under Chapter 20 of the General Statutes, or who commits indirect contempt by a juvenile as defined in G.S. 5A-31.

(8) Detention. - The secure confinement of a juvenile under a court order.

(9) Detention facility. - A facility approved to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities.

(10) District. - Any district court district as established by G.S. 7A-133.

(10a) Division. - The Division of Adult Correction and Juvenile Justice of the Department of Public Safety created under Article 12 of Chapter 143B of the General Statutes.

(11) Holdover facility. - A place in a jail which has been approved by the Department of Health and Human Services as meeting the State standards for detention as required in G.S. 153A-221 providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population.

(12) House arrest. - A requirement that the juvenile remain at the juvenile's residence unless the court or the juvenile court counselor authorizes the juvenile to leave for school, counseling, work, or other similar specific purposes, provided the juvenile is accompanied in transit by a parent, legal guardian, or other person approved by the juvenile court counselor.

(13) Intake. - The process of screening and evaluating a complaint alleging that a juvenile is delinquent or undisciplined to determine whether the complaint should be filed as a petition.

(14) Interstate Compact on Juveniles. - An agreement ratified by 50 states and the District of Columbia providing a formal means of returning a juvenile, who is an absconder, escapee, or runaway, to the juvenile's home state, and codified in Article 28 of this Chapter.

(15) Judge. - Any district court judge.

(16) Judicial district. - Any district court district as established by G.S. 7A-133.

(17) Juvenile. - Except as provided in subdivisions (7) and (27) of this section, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the Armed Forces of the United States. Wherever the term "juvenile" is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

(18) Juvenile court. - Any district court exercising jurisdiction under this Chapter.

(18a) Juvenile court counselor. - A person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.

(19) Repealed by Session Laws 2000, c. 137, s. 2, effective July 20, 2000.

(20) Petitioner. - The individual who initiates court action by the filing of a petition or a motion for review alleging the matter for adjudication.

(21) Post-release supervision. - The supervision of a juvenile who has been returned to the community after having been committed to the Division for placement in a youth development center.

(22) Probation. - The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a juvenile court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(23) Prosecutor. - The district attorney or an assistant district attorney.

(24) Protective supervision. - The status of a juvenile who has been adjudicated undisciplined and is under the supervision of a juvenile court counselor.

(25) Teen court program. - A community resource for the diversion of cases in which a juvenile has allegedly committed certain offenses for hearing by a jury of the juvenile's peers, which may assign the juvenile to counseling, restitution, curfews, community service, or other rehabilitative measures.

(26) Repealed by Session Laws 2001-95, s. 1, effective May 18, 2001.

(27) Undisciplined juvenile. -

a. A juvenile who, while less than 16 years of age but at least 6 years of age, is unlawfully absent from school; or is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or

b. A juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours.

(27a) Victim. - Any individual or entity against whom a crime or infraction is alleged to have been committed by a juvenile based on reasonable grounds that the alleged facts are true. For purposes of Article 17 of this

Chapter, the term may also include a parent, guardian, or custodian of a victim under the age of 18 years of age.

(28) Wilderness program. - A rehabilitative residential treatment program in a rural or outdoor setting.

(29) Youth development center. - A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Division. (1979, c. 815, s. 1; 1981, c. 336; c. 359, s. 2; c. 469, ss. 1-3; c. 716, s. 1; 1985, c. 648; c. 757, s. 156(q); 1985 (Reg. Sess., 1986), c. 852, s. 16; 1987, c. 162; c. 695; 1987 (Reg. Sess., 1988), c. 1037, ss. 36, 37; 1989 (Reg. Sess., 1990), c. 815, s. 1; 1991, c. 258, s. 3; c. 273, s. 11; 1991 (Reg. Sess., 1992), c. 1030, s. 3; 1993, c. 324, s. 1; c. 516, ss. 1-3; 1997-113, s. 1; 1997-390, ss. 3, 3.2; 1997-443, s. 11A.118(a); 1997-506, s. 30; 1998-202, s. 6; 1998-229, s. 1; 2000-137, s. 2; 2001-95, ss. 1, 2, 5; 2001-487, s. 3; 2001-490, s. 2.1; 2007-168, s. 2; 2009-545, s. 1; 2009-547, s. 1; 2011-145, s. 19.1(l); 2011-183, s. 4; 2017-57, s. 16D.4(a); 2017-186, s. 2(j); 2018-142, s. 23(b); 2019-186, s. 1(a).)

APPENDIX J

Article 22.

Probable Cause Hearing and Transfer Hearing.

§ 7B-2200. Transfer of jurisdiction of a juvenile under the age of 16 to superior court.

Except as otherwise provided in G.S. 7B-2200.5, after notice, hearing, and a finding of probable cause the court may, upon motion of the prosecutor or the juvenile's attorney or upon its own motion, transfer jurisdiction over a juvenile to superior court if the juvenile was at least 13 years of age but less than 16 years of age at the time the juvenile allegedly committed an offense that would be a felony if committed by an adult. If the alleged felony constitutes a Class A felony and the court finds probable cause, the court shall transfer the case to the superior court for trial as in the case of adults. (1979, c. 815, s. 1; 1991 (Reg. Sess., 1992), c. 842, s. 1; 1994, Ex. Sess., c. 22, s. 25; 1998-202, s. 6; 2017-57, s. 16D.4(d); 2018-142, s. 23(b).)

§ 7B-2200.1: Reserved for future codification purposes.

§ 7B-2200.2: Reserved for future codification purposes.

§ 7B-2200.3: Reserved for future codification purposes.

§ 7B-2200.4: Reserved for future codification purposes.

§ 7B-2200.5. Transfer of jurisdiction of a juvenile at least 16 years of age to superior court.

(a) If a juvenile was 16 years of age or older at the time the juvenile allegedly committed an offense that would be a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult, the court shall transfer jurisdiction over the juvenile to superior court for trial as in the case of adults after either of the following:

(1) Notice to the juvenile and a finding by the court that a bill of indictment has been returned against the juvenile charging the commission of an offense that constitutes a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult.

(2) Notice, hearing, and a finding of probable cause that the juvenile committed an offense that constitutes a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult.

(b) If the juvenile was 16 years of age or older at the time the juvenile allegedly committed an offense that would be a Class H or I felony if committed by an adult, after notice, hearing, and a finding of probable cause, the court may, upon motion of the prosecutor or the juvenile's attorney or upon its own motion, transfer jurisdiction over a juvenile to superior court pursuant to G.S. 7B-2203.

(c) A probable cause hearing conducted pursuant to subdivision (2) of subsection (a) of this section shall be conducted within 90 days of the date of the juvenile's first appearance. The court may continue the hearing for good cause.

(d) In any case where jurisdiction over a juvenile has been transferred to superior court, upon joint motion of the prosecutor and the juvenile's attorney, the court shall remand the case to

district court and shall expunge the superior court record in accordance with G.S. 15A-145.8. (2017-57, s. 16D.4(e); 2017-197, s. 5.3; 2018-142, s. 23(b); 2019-186, s. 8(a).)

§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior court.

(a) When jurisdiction over a juvenile is transferred to the superior court, the juvenile shall be fingerprinted and the juvenile's fingerprints shall be sent to the State Bureau of Investigation.

(b) When jurisdiction over a juvenile is transferred to the superior court, a DNA sample shall be taken from the juvenile if any of the offenses for which the juvenile is transferred are included in the provisions of G.S. 15A-266.3A. (1981, c. 862, s. 2; 1998-202, s. 6; 2010-94, s. 13.)

§ 7B-2202. Probable cause hearing.

(a) Except as otherwise provided in G.S. 7B-2200.5(a)(1), the court shall conduct a hearing to determine probable cause in all felony cases in which a juvenile was 13 years of age or older when the offense was allegedly committed. Except as otherwise provided in G.S. 7B-2200.5(c), the hearing shall be conducted within 15 days of the date of the juvenile's first appearance. The court may continue the hearing for good cause.

(b) At the probable cause hearing:

(1) A prosecutor shall represent the State;

(2) The juvenile shall be represented by counsel;

(3) The juvenile may testify, call, and examine witnesses, and present evidence; and

(4) Each witness shall testify under oath or affirmation and be subject to cross-examination.

(c) The State shall by nonhearsay evidence, or by evidence that satisfies an exception to the hearsay rule, show that there is probable cause to believe that the offense charged has been committed and that there is probable cause to believe that the juvenile committed it, except:

(1) A report or copy of a report made by a physicist, chemist, firearms identification expert, fingerprint technician, or an expert or technician in some other scientific, professional, or medical field, concerning the results of an examination, comparison, or test performed in connection with the case in issue, when stated in a report by that person, is admissible in evidence;

(2) If there is no serious contest, reliable hearsay is admissible to prove value, ownership of property, possession of property in a person other than the juvenile, lack of consent of the owner, possessor, or custodian of property to the breaking or entering of premises, chain of custody, and authenticity of signatures.

(d) Counsel for the juvenile may waive in writing the right to the hearing and stipulate to a finding of probable cause.

(e) If probable cause is found and transfer to superior court is not required by G.S. 7B-2200 or G.S. 7B-2200.5, upon motion of the prosecutor or the juvenile's attorney or upon its own motion, the court shall either proceed to a transfer hearing or set a date for that hearing. If the juvenile has not received notice of the intention to seek transfer at least five days prior to the probable cause hearing, the court, at the request of the juvenile, shall continue the transfer hearing.

(f) If the court does not find probable cause for a felony offense, the court shall:

(1) Dismiss the proceeding, or

(2) If the court finds probable cause to believe that the juvenile committed a lesser included offense that would constitute a misdemeanor if committed by an adult, either proceed to an adjudicatory hearing or set a date for that hearing. The adjudicatory hearing shall be a separate hearing. The court may continue the adjudicatory hearing for good cause. (1979, c. 815, s. 1; 1981, c. 469, ss. 15, 16; 1994, Ex. Sess., c. 22, s. 26; 1998-202, s. 6; 2015-58, s. 1.2; 2017-57, s. 16D.4(f); 2018-142, s. 23(b); 2019-186, s. 8(b).)

§ 7B-2203. Transfer hearing.

(a) At the transfer hearing, the prosecutor and the juvenile may be heard and may offer evidence, and the juvenile's attorney may examine any court or probation records, or other records the court may consider in determining whether to transfer the case.

(b) In the transfer hearing, the court shall determine whether the protection of the public and the needs of the juvenile will be served by transfer of the case to superior court and shall consider the following factors:

(1) The age of the juvenile;

(2) The maturity of the juvenile;

(3) The intellectual functioning of the juvenile;

(4) The prior record of the juvenile;

(5) Prior attempts to rehabilitate the juvenile;

(6) Facilities or programs available to the court prior to the expiration of the court's jurisdiction under this Subchapter and the likelihood that the juvenile would benefit from treatment or rehabilitative efforts;

(7) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; and

(8) The seriousness of the offense and whether the protection of the public requires that the juvenile be prosecuted as an adult.

(c) Any order of transfer shall specify the reasons for transfer. When the case is transferred to superior court, the superior court has jurisdiction over that felony, any offense based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan of that felony, and any greater or lesser included offense of that felony.

(d) If the court does not transfer the case to superior court, the court shall either proceed to an adjudicatory hearing or set a date for that hearing. The adjudicatory hearing shall be a separate hearing. The court may continue the adjudicatory hearing for good cause. (1979, c. 815, s. 1; 1983, c. 532, s. 1; 1994, Ex. Sess., c. 22, s. 27; 1998-202, s. 6; 2015-58, s. 1.3.)

§ 7B-2204. Right to pretrial release; detention.

(a) Once the order of transfer has been entered, the juvenile has the right to pretrial release as provided in G.S. 15A-533 and G.S. 15A-534. The release order shall specify the person or persons to whom the juvenile may be released. Pending release, the court shall order that the juvenile be detained in a detention facility while awaiting trial. Personnel of the Juvenile Justice Section of the Division, or personnel approved by the Juvenile Justice Section, shall transport the juvenile from the detention facility to court.

(b) The court may order the juvenile to be held in a holdover facility at any time the presence of the juvenile is required in court for pretrial hearings or trial, if the court finds that it would be inconvenient to return the juvenile to the detention facility. Personnel of the Justice Section of the Division, or personnel approved by the Juvenile Justice Section, shall transport the juvenile from the holdover facility to court and shall transport the juvenile back to the detention center.

(c) If the juvenile reaches the age of 18 years while awaiting the completion of proceedings in superior court, the juvenile shall be transported by personnel of the Juvenile Justice Section of the Division, or personnel approved by the Juvenile Justice Section, to the custody of the sheriff of the county where the charges arose.

(d) Should the juvenile be found guilty, or enter a plea of guilty or no contest to a criminal offense in superior court and receive an active sentence, then immediate transfer to the Division of Adult Correction and Juvenile Justice of the Department of Public Safety shall be ordered. Until such time as the juvenile is transferred to the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, the juvenile may be detained in a holdover facility. The juvenile may not be detained in a detention facility pending transfer to the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, unless the detention facility is operated by the sheriff pursuant to G.S. 7B-1905(b).

(e) The juvenile may be kept by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety as a safekeeper until the juvenile is placed in an appropriate correctional program. (1979, c. 815, s. 1; 1987, c. 144; 1991, c. 352, s. 1; 1998-202, s. 6; 2011-145, s. 19.1(h); 2017-186, s. 2(k); 2019-186, s. 9.)

AMENDMENT XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation