



# **Basic Criminal History**

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# Presenter

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# Commission Resources



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# Basic Criminal History Objectives

- A review of the basic rules for establishing the applicable criminal history category
- The assignment of criminal history points
  - Sentence length and time frames
  - Offenses excluded from counting
- Exercises



# Basic Criminal History Objectives

- Not covered in Basics (but addressed in Advanced Criminal History)
  - Single-Separate determination
  - Revocations of supervision
  - “Overrides” in Criminal History, *e.g.*, Career Offender



## Sentencing Table

# Criminal History Category (Criminal History Points)

Offense Level	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24



## Numerous “Rules” in Chapter Four

- Typically clear regarding previous federal record
- Issues more likely to arise regarding previous state/local record
  - Look to case law
  - Established methods used in your court for recurring issues



# Criminal History

Measures the seriousness of a defendant's prior record  
and the likelihood of recidivism

- ✓ “Prior Sentences”  
(1, 2, or 3 points each)
- ✓ “Status”  
(2 points)



## Criminal History Points

### Prior Offense Committed at 18 or Older

<b>Points*</b>	<b>Sentence</b>	<b>Time Frame</b> (Earliest Date of Relevant Conduct)
<b>3</b>	<b>&gt;13 months</b>	Within 15 yrs. of prior sentence imposition or release
<b>2</b>	<b>≥60 days</b>	Within 10 yrs. of prior sentence imposition
<b>1</b> <b>(max of 4)</b>	<b>All others**</b>	Within 10 yrs. of prior sentence imposition

\* If otherwise countable

\*\* Exceptions may apply



## Criminal History Points

### Prior Offense Committed Before 18

Points*	Sentence	Time Frame (Earliest Date of Relevant Conduct)
3	Only if convicted as an adult and >13 months	Within 15 yrs. of prior sentence imposition or release
2	≥ 60 days	Within 5 yrs. of prior sentence imposition or release
1 (max of 4)	All others**	Within 5 yrs. of prior sentence imposition

\* If otherwise countable

\*\* Exceptions may apply



# Length of Prior Sentences

## §4A1.2(a) and App. Note 2

- Set by maximum sentence imposed
  - If sentence or any portion is suspended, the maximum is established by the unsuspended portion
- Unaffected by release
  - *E.g.*, release to parole or for “good time”



## Some Considerations in Establishing a “Prior Sentence”

1. Is it part of relevant conduct?
2. Is it within the time frame?
3. Excluded misdemeanors
4. Expungements, foreign and tribal convictions



# Is the Previous Sentence Part of Relevant Conduct?



# “Prior Sentence”

§4A1.2(a)(1) & App. Note 1

**Conduct that is part of the  
relevant conduct of the instant offense  
will not be a “prior sentence”  
for criminal history**

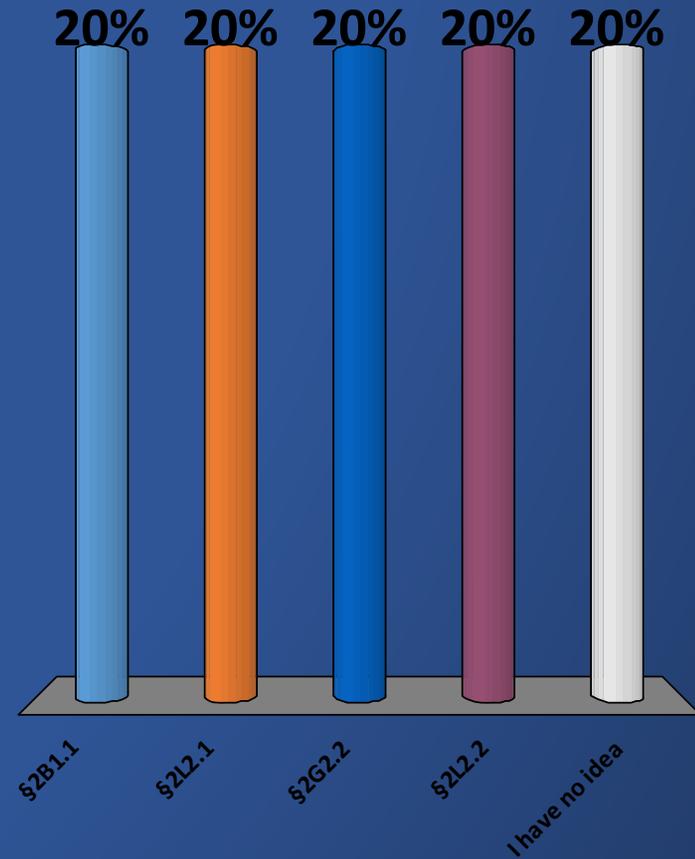


## Example #1

Defendant was convicted in federal court of 5 Counts of Distribution of Heroin, each occurring on a separate date. The defendant was convicted by the State of MN on the first sale. The defendant served a sentence of 1 year in jail. Upon his release, he continued to sell heroin and was subsequently arrested by the DEA.

# Will the state conviction receive criminal history points?

- A. Yes
- B. No
- C. I have no idea



## “Prior Sentence” (cont.)

§4A1.2(a)(1) & App. Note 1

### Exception to the Rule:

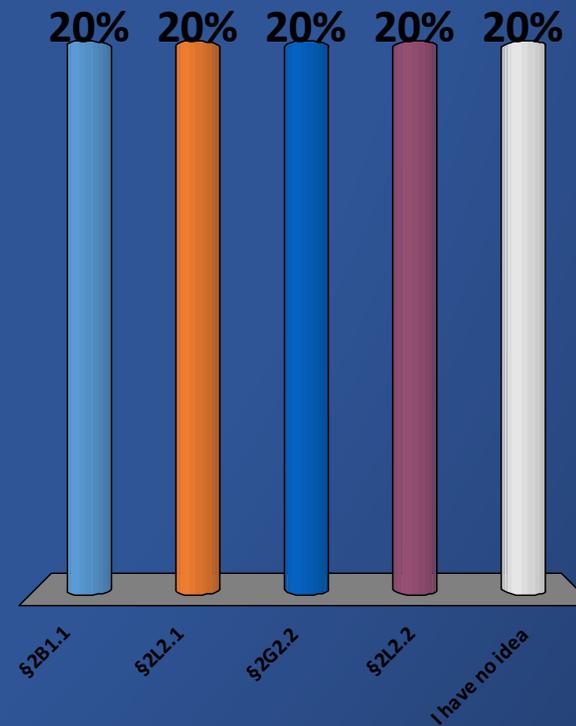
When determining the base offense level for §2K2.1  
(Felon in Possession)



## Example #2

Defendant has two prior convictions for crimes of violence. He was arrested with a sawed off-shotgun. What is the base offense level?

- A. 26
- B. 24
- C. 22
- D. 20



# Is the Previous Sentence Within the Time Frame?



## Criminal History Points

### Prior Offense Committed at 18 or Older

<b>Points*</b>	<b>Sentence</b>	<b>Time Frame</b> (Earliest Date of Relevant Conduct)
<b>3</b>	<b>&gt;13 months</b>	<b>Within 15 yrs. of prior sentence imposition or release</b>
<b>2</b>	<b>≥60 days</b>	<b>Within 10 yrs. of prior sentence imposition</b>
<b>1</b> <b>(max of 4)</b>	<b>All others**</b>	<b>Within 10 yrs. of prior sentence imposition</b>

\* If otherwise countable

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## Criminal History Points

### Prior Offense Committed Before 18

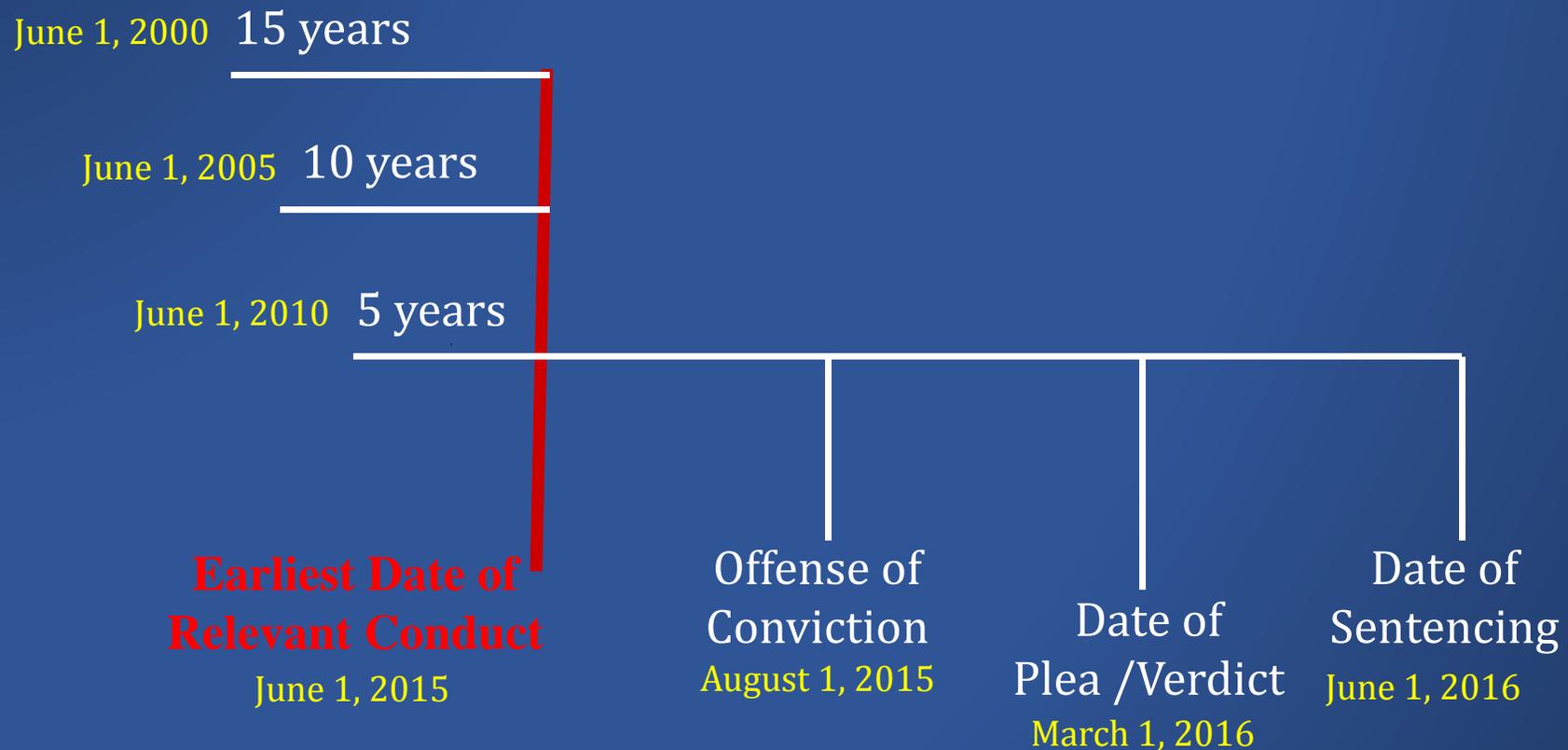
<b>Points*</b>	<b>Sentence</b>	<b>Time Frame</b> (Earliest Date of Relevant Conduct)
<b>3</b>	<b>Only if convicted as an adult and &gt;13 months</b>	<b>Within 15 yrs. of prior sentence imposition or release</b>
<b>2</b>	<b>≥ 60 days</b>	<b>Within 5 yrs. of prior sentence imposition or release</b>
<b>1</b> <b>(max of 4)</b>	<b>All others**</b>	<b>Within 5 yrs. of prior sentence imposition</b>

\* If otherwise countable

\*\* Exceptions may apply



# The Interplay Between Criminal History Time Frames and Relevant Conduct



## Relevant Conduct and “Status”

§4A1.1(d) & App. Note 4

- “Status” if under criminal justice sentence during any relevant conduct

Note: “status” can only count if the sentence from which it resulted has been counted



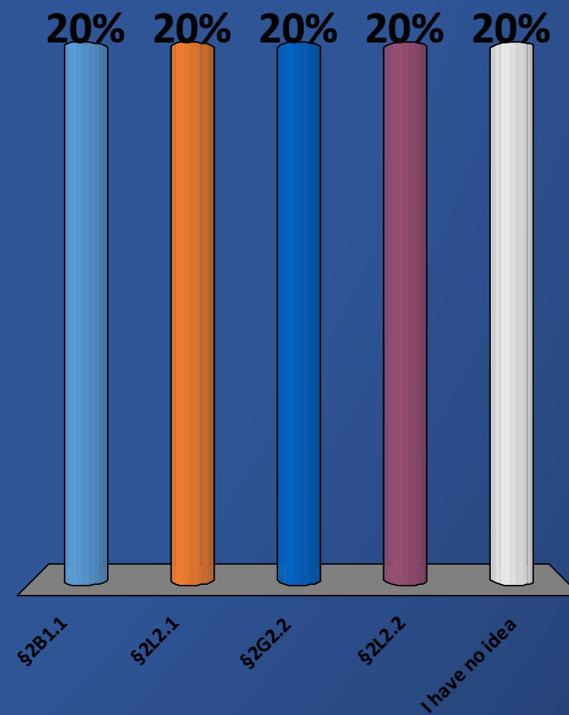
## Example #3

The defendant was convicted of Conspiracy to Distribute Cocaine from March 1, 2014 through March 1, 2015.

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
05/14/2014 (Age 47)	Possession of a Firearm St. Louis County District Court Duluth, MN	01/11/15: Pled guilty, 1 day jail time served followed by 24 months probation

Will the defendant be assessed 2 additional criminal history points pursuant to 4A1.1(d)?

- A. Yes
- B. No
- C. I have no idea



# Criminal History Exercises

Assume that the instant federal offense is being sentenced today,  
and that the earliest date of relevant conduct is  
January 1<sup>st</sup> of this year (2016).

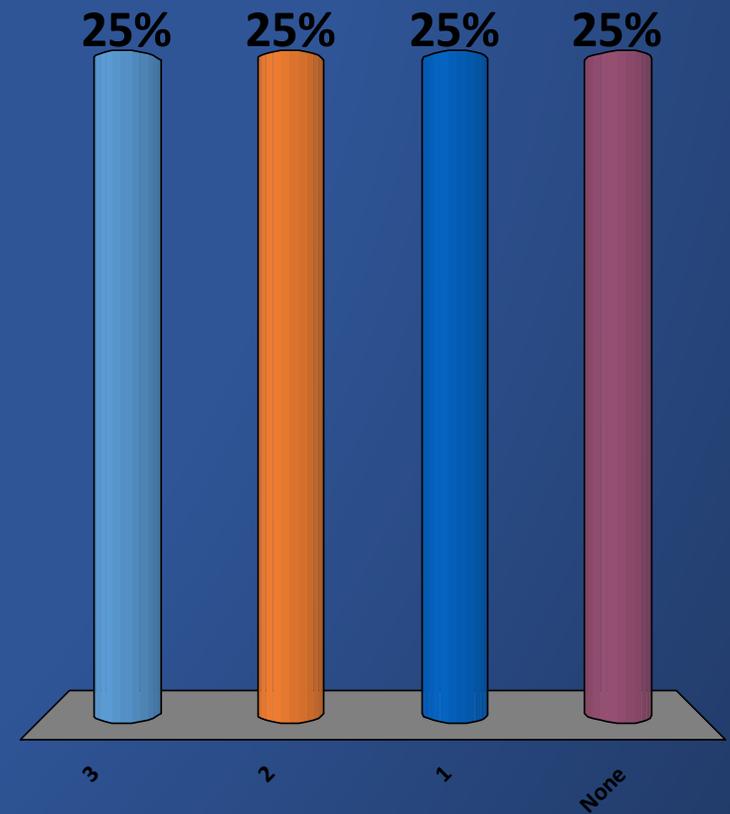


# Criminal History Exercise #1:

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
7/13/10 (Age 23)	Possession of Class D Substance/Marijuana District Court Worcester, MA	10/25/10: Guilty 1 year DOC Sentence Suspended with probation to 10/27/12

# How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. None

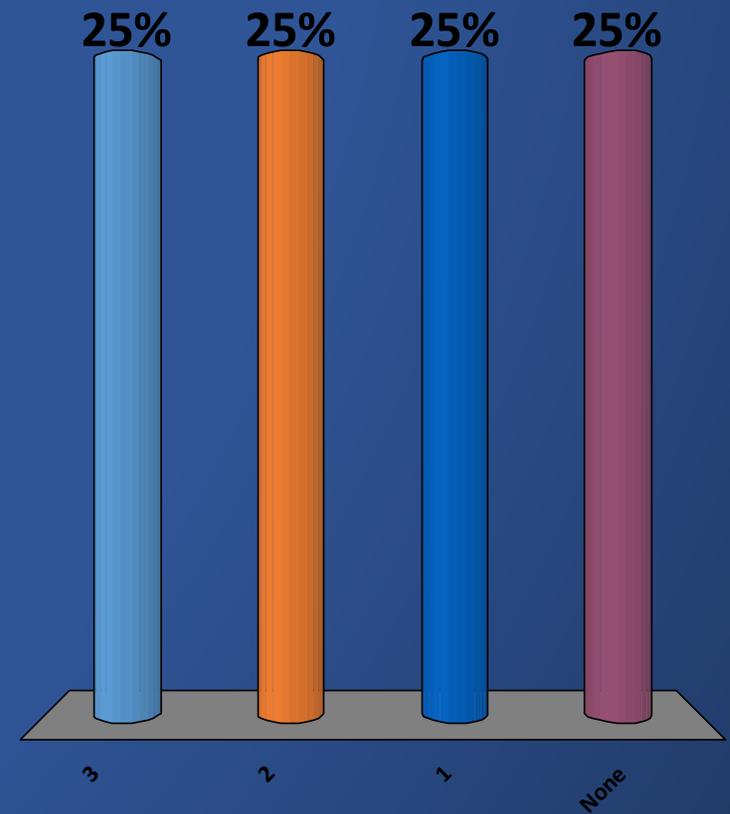


## Criminal History Exercise #2:

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
04/06/11 (Age 47)	Possession of Firearm in the Commission of a Felony Orange County Circuit Court Orlando, Florida	09/21/11: Pled nolo contendere, 1 day jail time served followed by 24 months probation

# How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. None

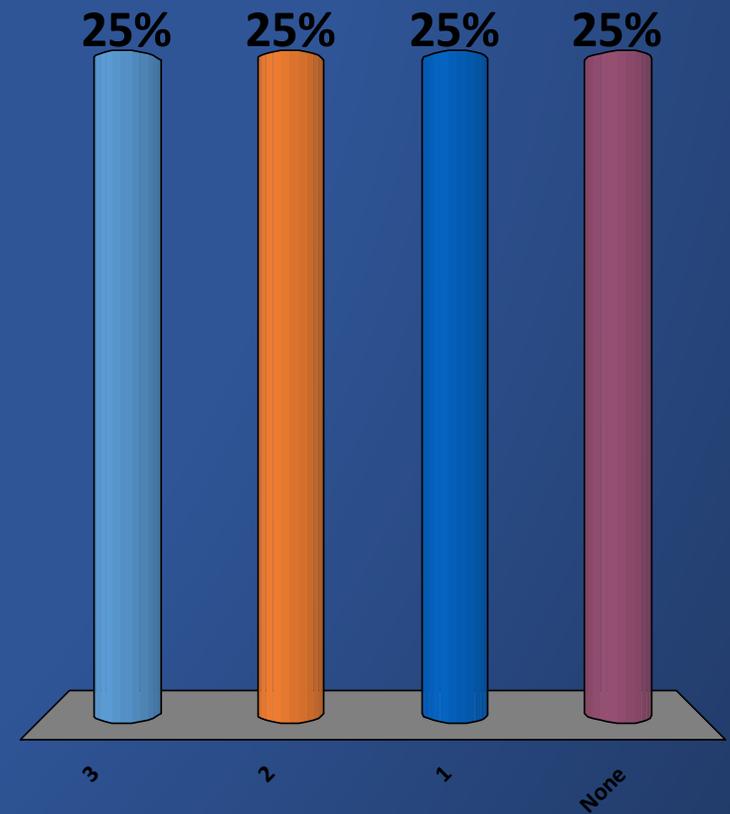


## Criminal History Exercise #3:

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
01/27/03 (Age 16)	Assault Causing Bodily Injury to a Family Member Wichita Falls County Court, Wichita Falls, TX	02/26/03: 6 months probation

# How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. None

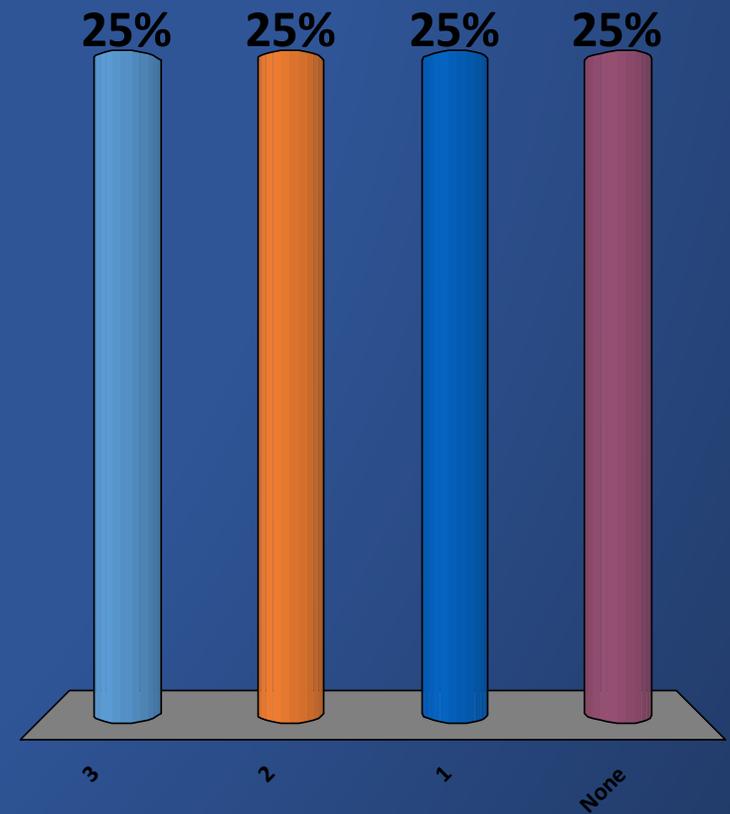


## Criminal History Exercise #4:

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
12/30/08 (Age 27)	Attempt Burning Other Real Property 3 <sup>rd</sup> Cir. Court Detroit, MI	08/18/09: 18 months to five years custody

# How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. None

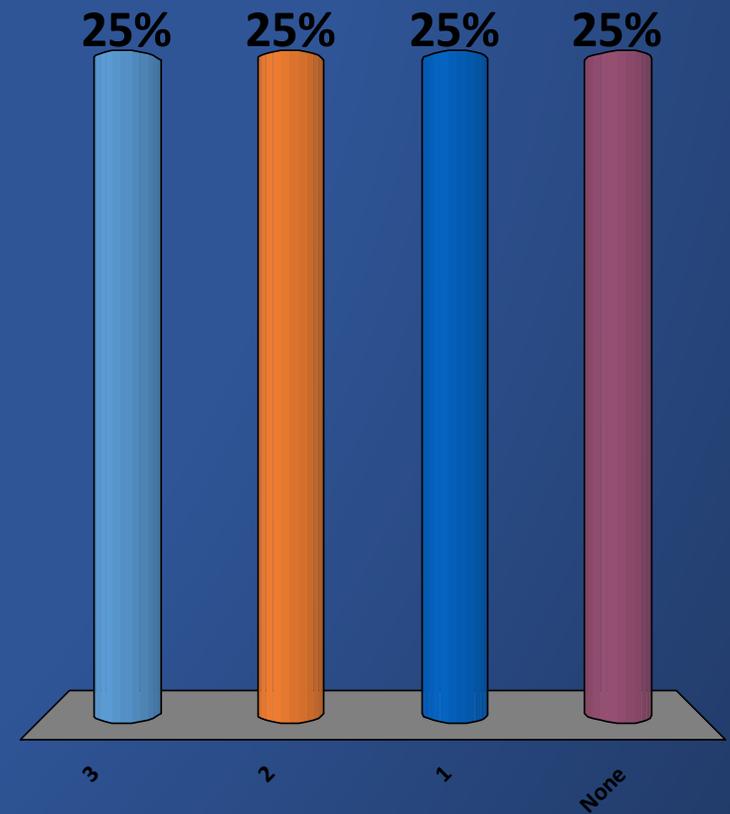


## Criminal History Exercise #5:

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
01/19/12 (Age 21)	Criminal Possession of Firearm Shawnee County District Court, Topeka KS	06/07/12: 10 months custody

# How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. None

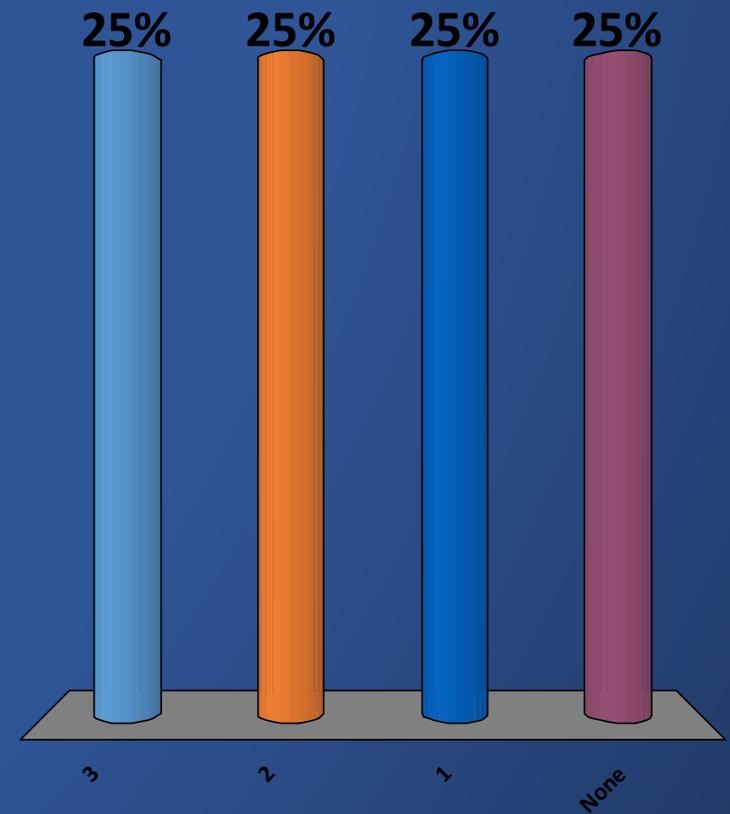


## Criminal History Exercise #6:

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
03/24/11 (Age 36)	Obstructing Legal Process Topeka Municipal Court, Topeka KS	02/23/12: 179 days custody, suspended; 24 months probation

# How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. None

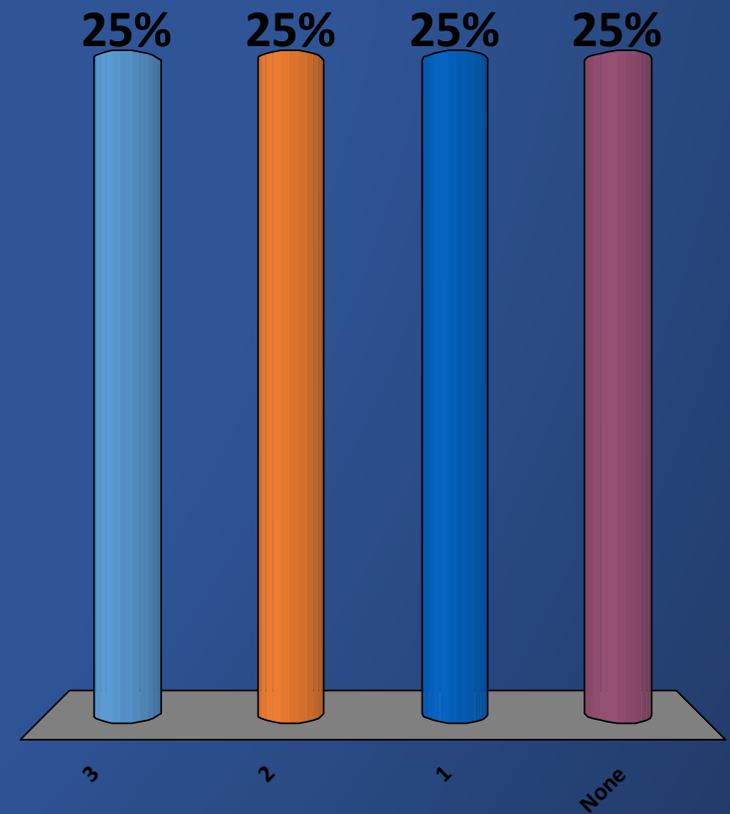


## Criminal History Exercise #7:

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
07/30/06 (Age 15)	Manslaughter I Lincoln Co. Cir. Court Lincoln City, OR	04/20/07: 10 years imprisonment, w/3 years post-prison supervision  Although the defendant was a juvenile at the time, he was convicted in adult court

# How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. None

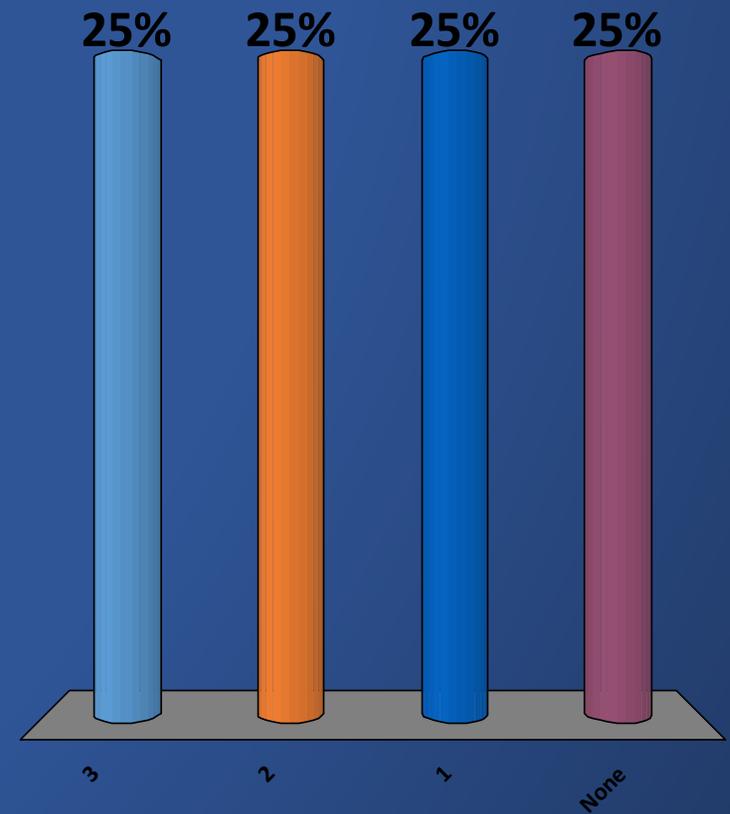


## Criminal History Exercise #8:

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
10/05/11 (Age 29)	Possession of Cocaine Volusia Co. Cir. Court Deland, FL	02/28/12: Guilty, time served (338 days county jail)

# How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. None



# Rules for Misdemeanors

## §4A1.2(c)(1) & (c)(2) & (o)

- §4A1.2(c)(1) - List of misdemeanors and petty offenses that are only counted when:
  - The sentence was probation of more than one year
  - The sentence was imprisonment of at least thirty days
  - The prior offense was similar to an instant offense
  - *E.g.*, driving without license or with suspended license



## Rules for Misdemeanors (cont.)

### §4A1.2(c)(1) & (c)(2) & (o)

- §4A1.2(c)(2) - List of misdemeanor and petty offenses that are never counted
  - *E.g., public intoxication or speeding*
- “Misdemeanor” means having a maximum statutory penalty of one year or less
  - *Note: All such offenses are counted if a “felony offense” (i.e., maximum of over 1 yr.)*

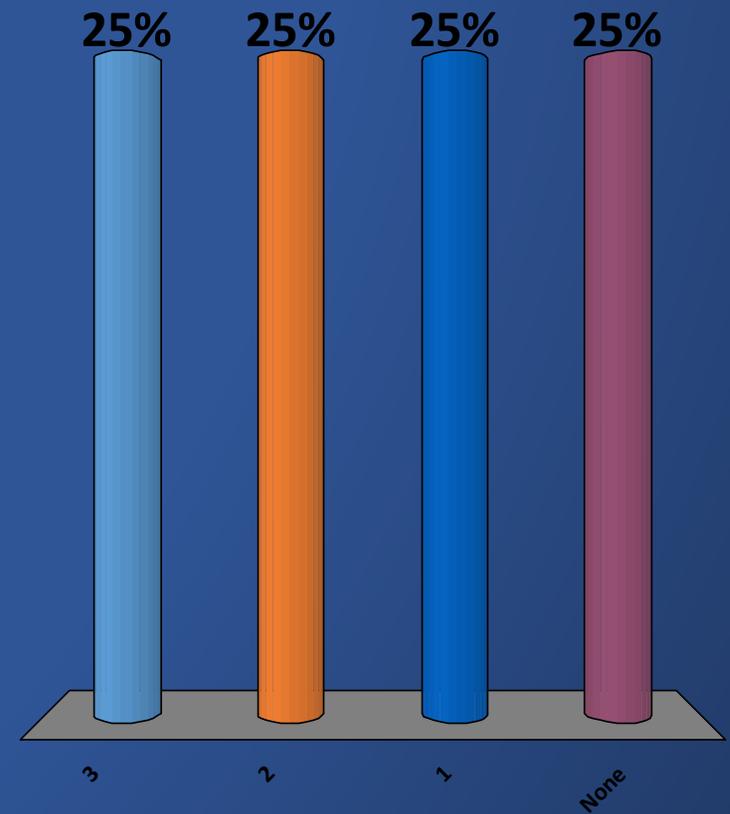


## Criminal History Exercise #9:

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
08/10/12 (Age 22)	Unlicensed Driver Los Angeles Co. Municipal Court Los Angeles, CA	12/22/12: Fine imposed

# How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. None

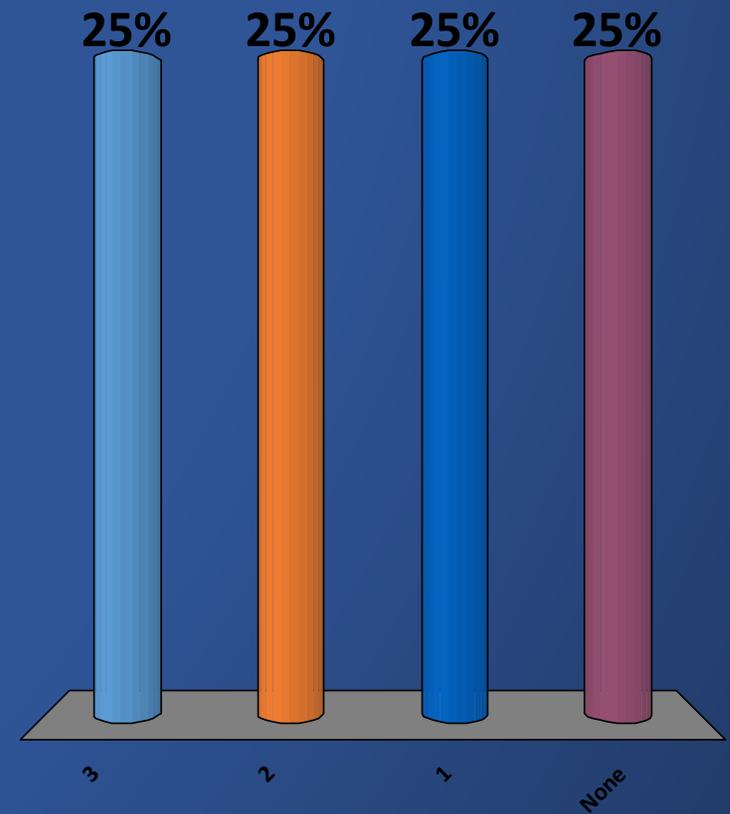


# Criminal History Exercise #10:

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
11/21/13 (Age 21)	Driving While Intoxicated Wichita County 30 <sup>th</sup> Judicial District Court Wichita Falls, TX	07/20/14: 1 day imprisonment

# How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. None



## Other Considerations

- Diversionary dispositions without a finding of guilt are not counted. Pardons are counted.
  - §4A1.2(f) & (j), App. Notes 9 & 10
- Military sentences are only counted if imposed by a general or special court-martial.
  - §4A1.2(g)
- Expungements, Foreign Sentences and Tribal Sentences are never counted, but may be considered under §4A1.3 (Adequacy of Criminal History Category)
  - §4A1.1(h) & (i)

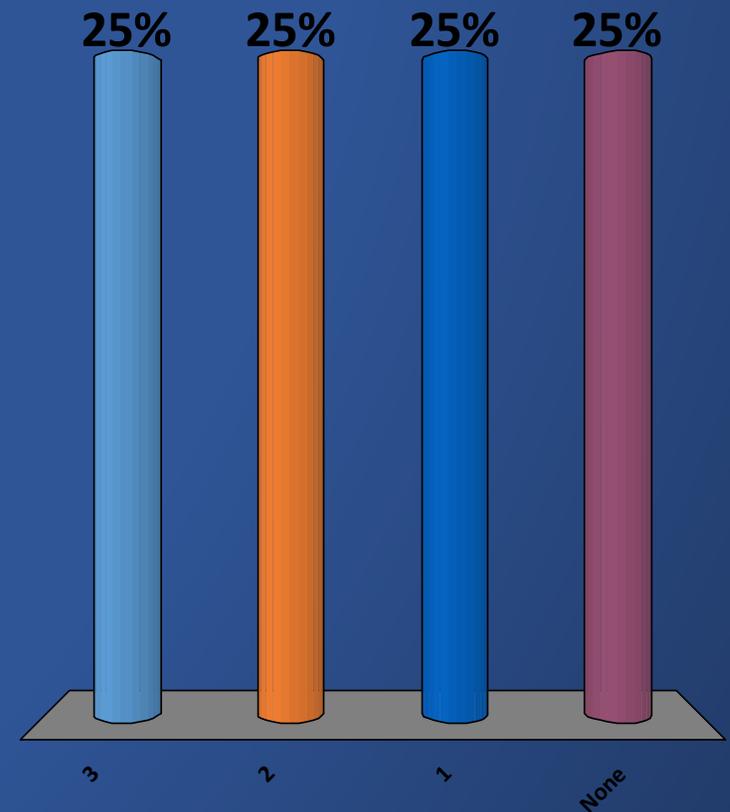


# Criminal History Exercise #11:

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
12/22/11 (Age 36)	Possession of a Prohibited Weapon: Bear Spray Winnipeg Provincial Court Winnipeg, Manitoba, Canada	02/10/12: 30 months imprisonment

# How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. None



# Thank You!



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