



Immigration

Thursday, September 8, 2016

11:00 am – 12:15 pm

1:45 pm – 3:00 pm



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Session Objectives

- Review amendments to §2L1.1 (Smuggling, Harboring, Transporting Unlawful Aliens)
- Review amendments to §2L1.2 (Unlawfully Entering or Remaining in the United States)
- Apply the new §2L1.2 guideline to scenarios





Alien Smuggling Amendment (§ 2L1.1)

Effective 11/1/16



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May 17, 2016

Smuggling Unaccompanied Minors

- Offense-based instead of defendant-based
- Increased from +2 to +4 levels
- Expands list of persons who are authorized to accompany minor
- Minor is defined as under 18 vs. under 16



Smuggling Unaccompanied Minors

§2L1.2(b)(4)

- ~~If the defendant smuggled, transported, or harbored~~ **If the offense involved the smuggling, transporting, or harboring of a minor who was unaccompanied by the minor's parent ~~or grandparent~~, adult relative, or legal guardian, increase by ~~2~~ 4 levels.**



Sexual Abuse of Aliens

- Sexual abuse of an undocumented person warrants the 4-level enhancement for “serious bodily injury”
- Sexual abuse defined as an offense under:
 - 18 U.S.C. § 2241 or § 2242 or
 - Any similar offense under state law





Illegal Reentry Amendment (§ 2L1.2)

Effective 11/1/16



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May 17, 2016

Illegal Reentry Amendment

- Responds to 3 primary concerns:
 1. Complexity/uncertainty of “categorical approach”
 2. Severity of 16- and 12-level increases
 3. Other types of criminal conduct committed by illegal reentry offenders



New §2L1.2 Guideline – 3 Key Factors

1. Prior Illegal Reentry/Entry Convictions
2. Length of Prior Sentence **Before** the First Order of Deportation
3. Length of Prior Sentence **After** the First Order of Deportation

****NOTE:** All priors **MUST** be counted for criminal history



What You Need to Apply the New Guideline Correctly ¹¹

1. Date of first order of removal or deportation
2. Prior convictions for illegal reentry/entry offenses that received criminal history points
3. Prior felony convictions that predate the first order of deportation/removal that received criminal history points
4. Prior felony convictions committed after the first order of deportation/removal that received criminal history points



Illegal Reentry Amendment - §2L1.2

- Base Offense Level (unchanged) **8**
- Specific Offense Characteristics
 - (b)(1) Considers convictions for illegal reentries **+4 or +2**
 - (b)(2) Considers other convictions before the defendant's first order of deportation **+10, +8, +6, +4, or +2**
 - (b)(3) Considers other convictions after the defendant's first order of deportation **+10, +8, +6, +4, or +2**



Prior Illegal Reentry/Entry Convictions

- (b)(1)– If the defendant committed the instant offense after sustaining:
 - A felony conviction that is an illegal reentry offense **[+4]**
 - 2+ misdemeanor convictions for illegal entry offenses **[+2]**



Statutory Penalties for Illegal Entry

8 U.S.C. § 1325(a)

- Illegal entry – Class B Misdemeanor 6 months
- Second or subsequent § 1325(a) 2 years



Length of Prior Sentence Before First Deportation

- (b)(2)– If before the first deportation, the defendant sustained:
 - Felony conviction with sentence \geq 5 years imposed **[+10]**
 - Felony conviction with sentence \geq 24 mos. imposed **[+8]**
 - Felony conviction with sentence of $>$ 13 mos. imposed **[+6]**
 - Any other felony conviction **[+4]**
 - 3+ misdemeanor crimes of violence, drug offenses **[+2]**



Length of Prior Sentence After Reentry

- (b)(3)– If after the first deportation, the defendant committed and sustained:
 - Felony conviction with sentence \geq 5 years imposed **[+10]**
 - Felony conviction with sentence \geq 24 mos. imposed **[+8]**
 - Felony conviction with sentence of $>$ 13 mos. imposed **[+6]**
 - Any other felony conviction **[+4]**
 - 3+ misdemeanor crimes of violence or drug offenses **[+2]**





§2L1.2 Scenarios



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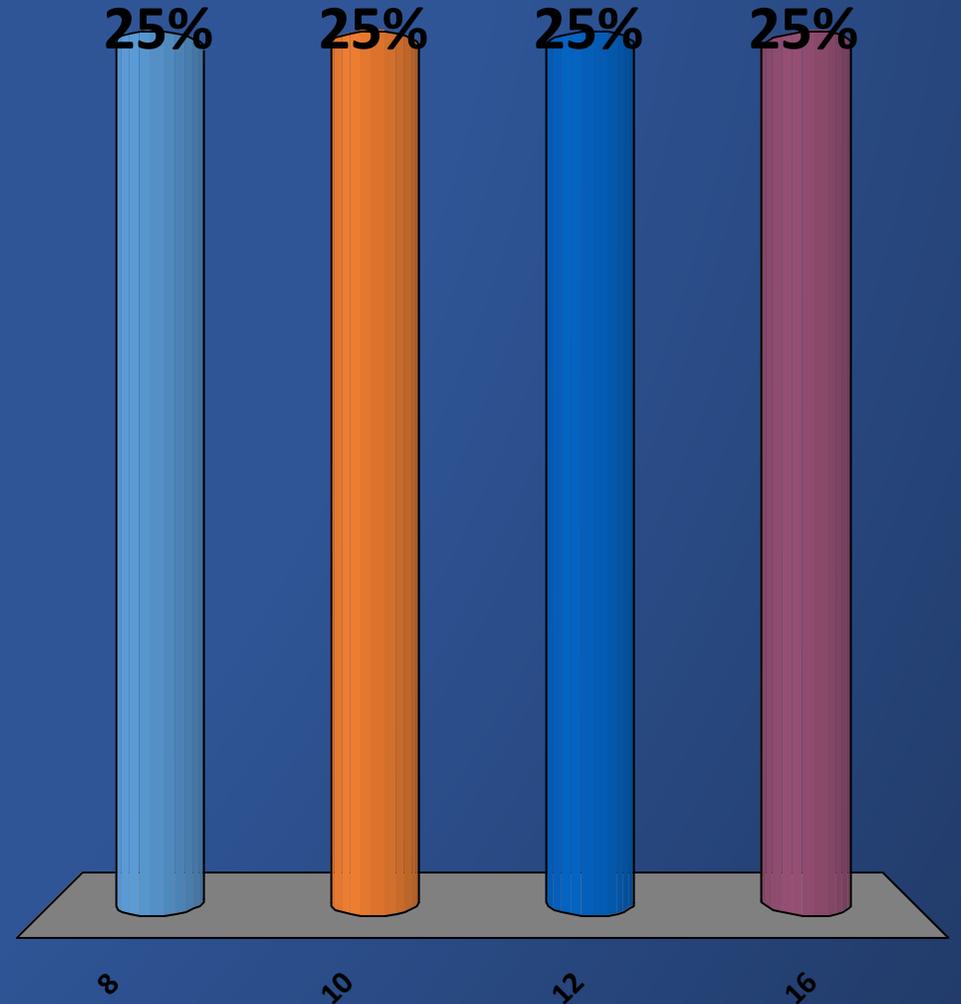
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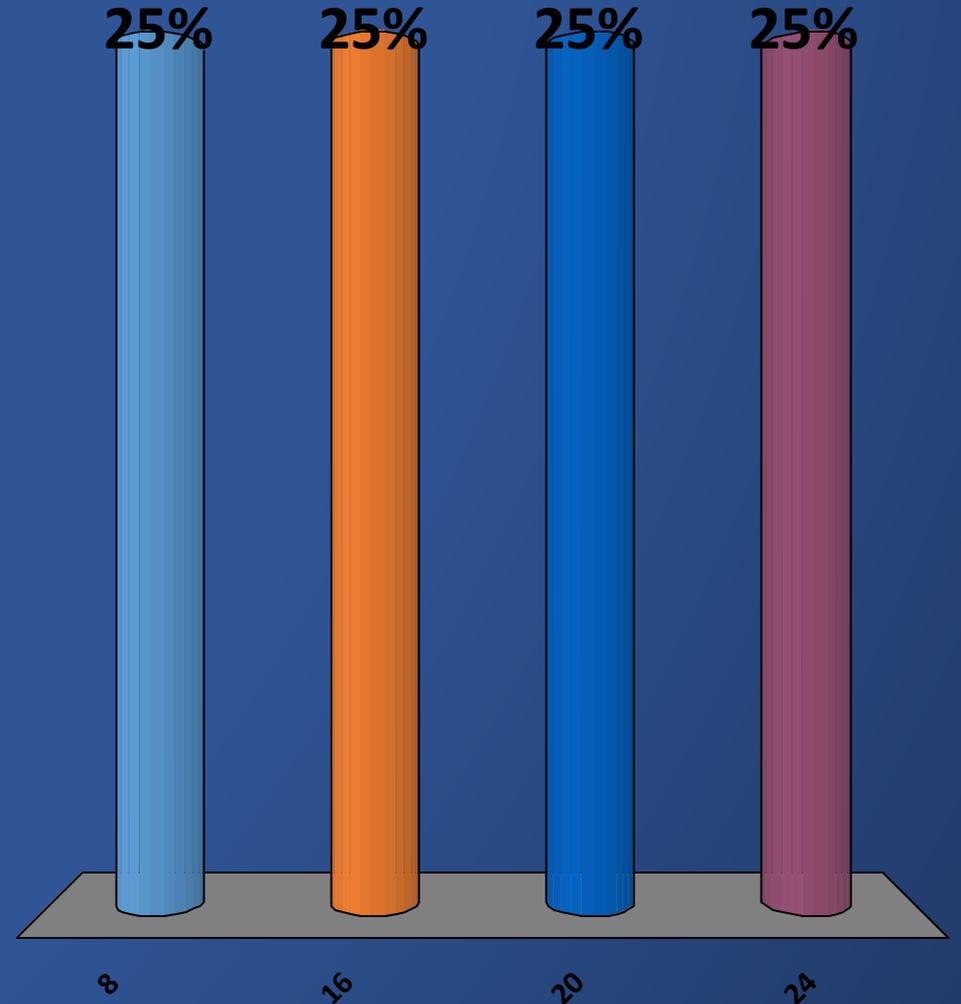
Illegal Reentry Scenario 1: The offense level is.....

- A. 8
- B. 10
- C. 12
- D. 16



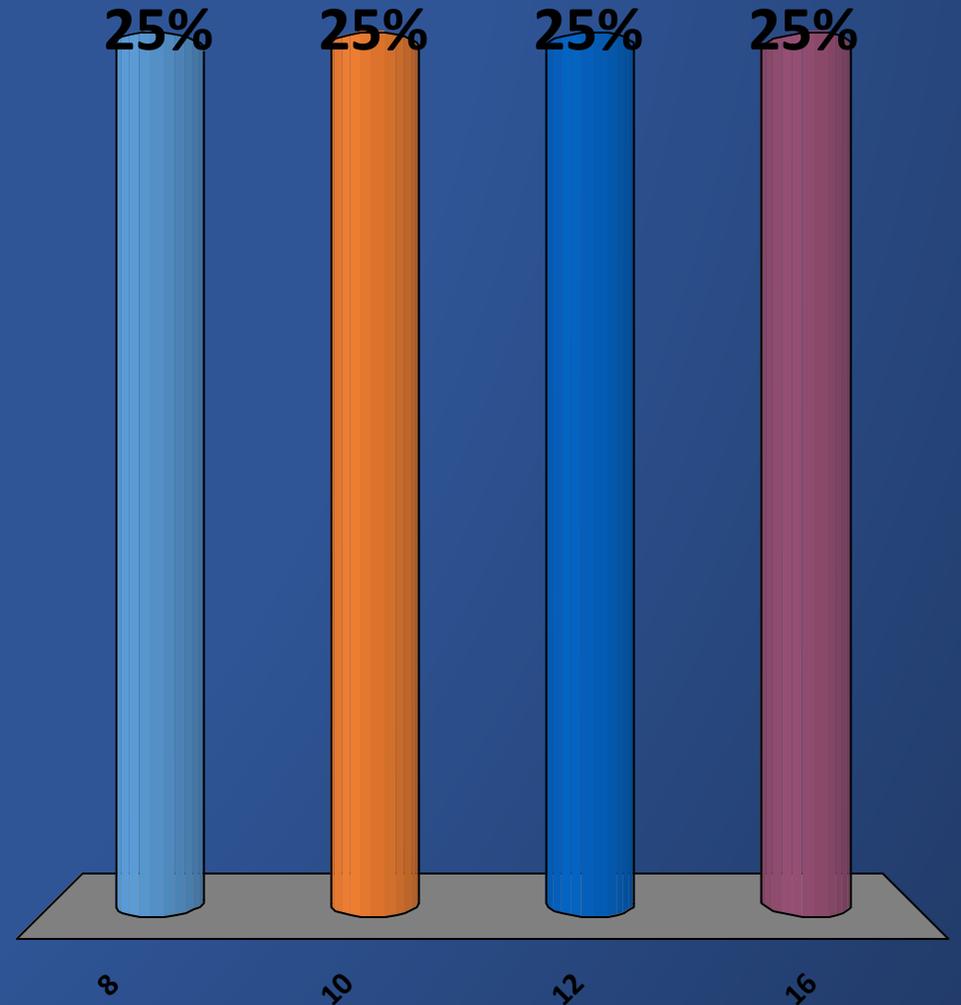
Illegal Reentry Scenario 2: The offense level is.....

- A. 8
- B. 16
- C. 20
- D. 24



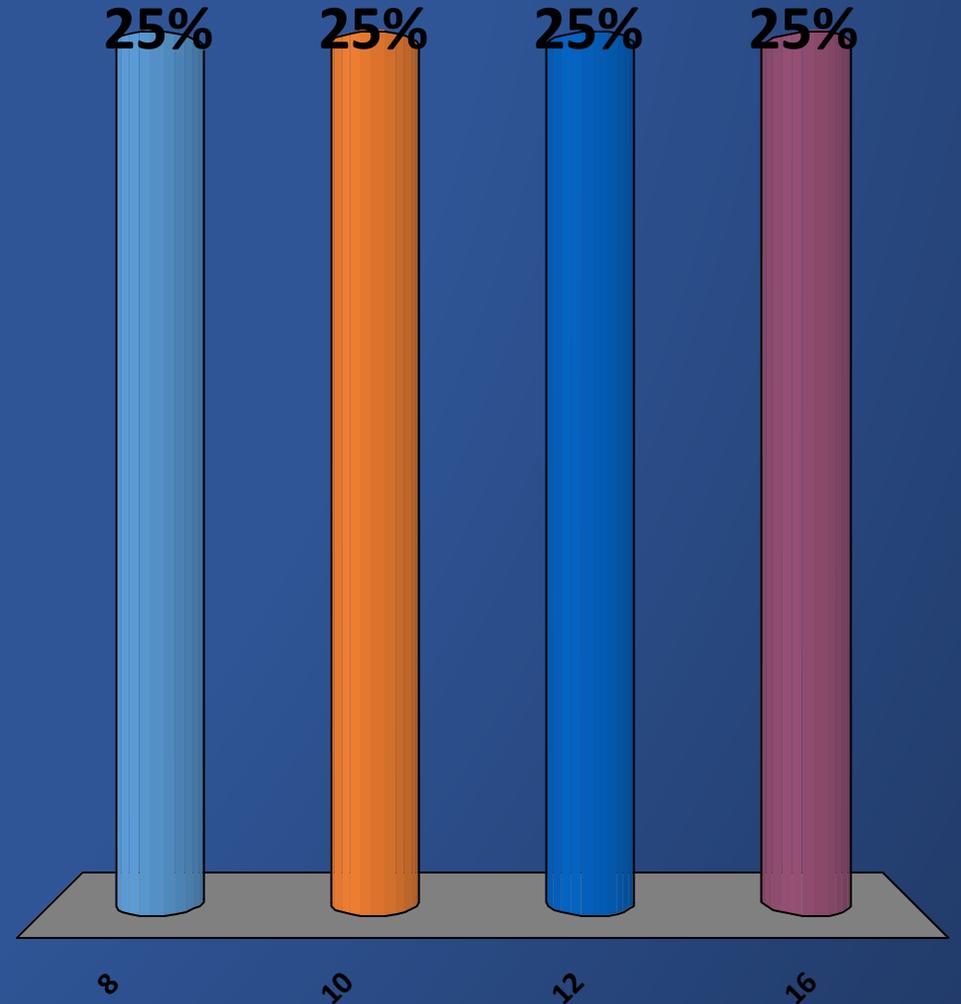
Illegal Reentry Scenario 3: The offense level is.....

- A. 8
- B. 10
- C. 12
- D. 16



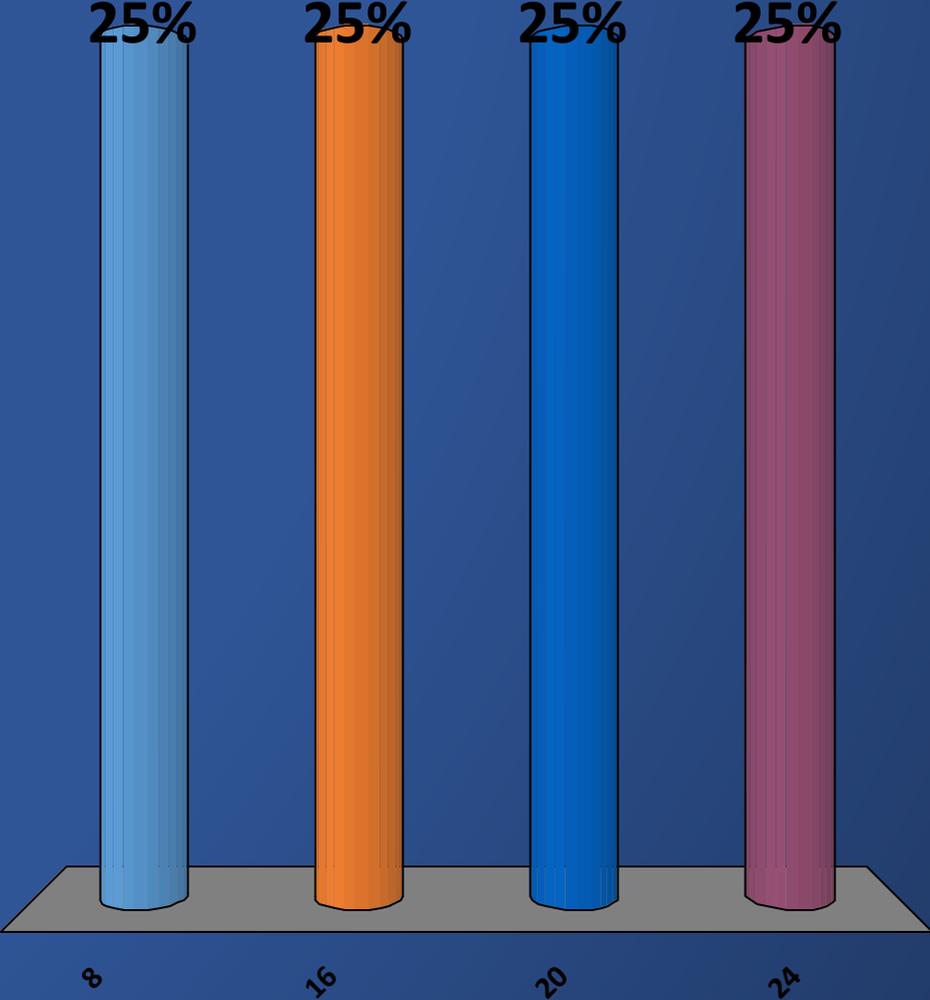
Illegal Reentry Scenario 4: The offense level is.....

- A. 8
- B. 10
- C. 12
- D. 16



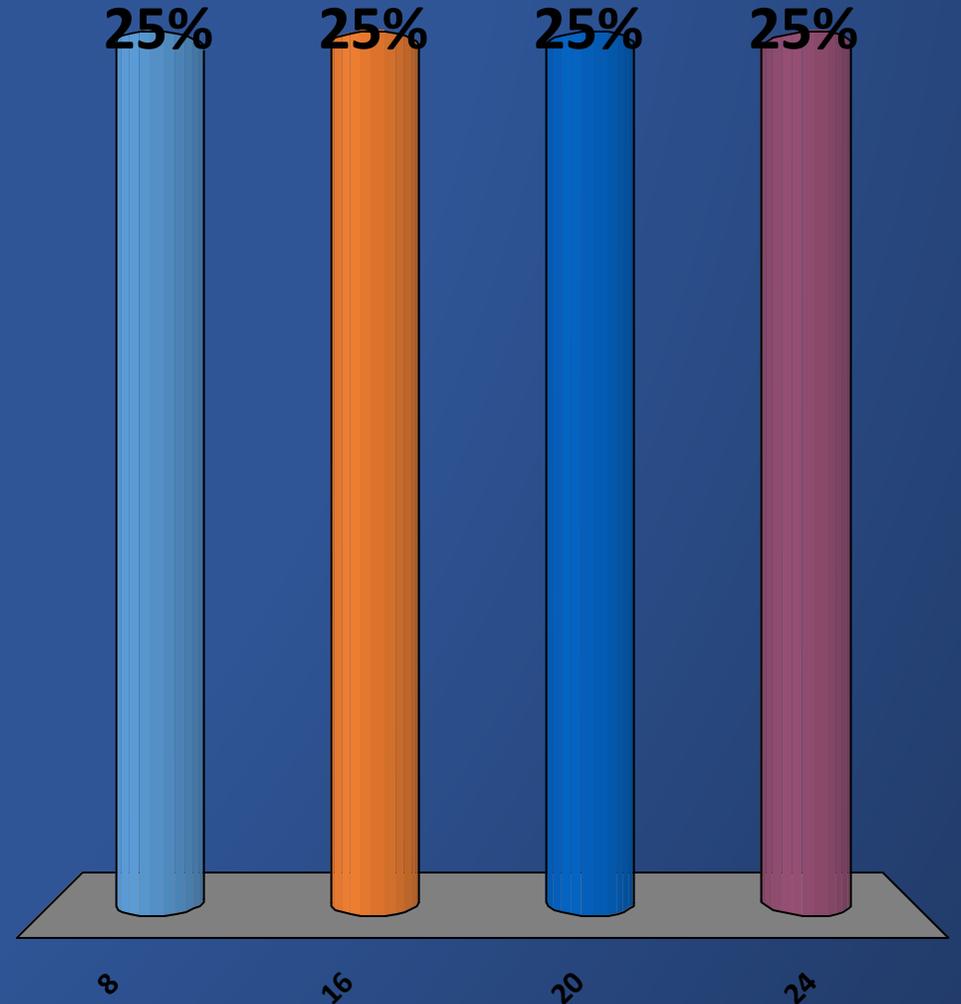
Illegal Reentry Scenario 5: The offense level is.....

- A. 8
- B. 16
- C. 20
- D. 24



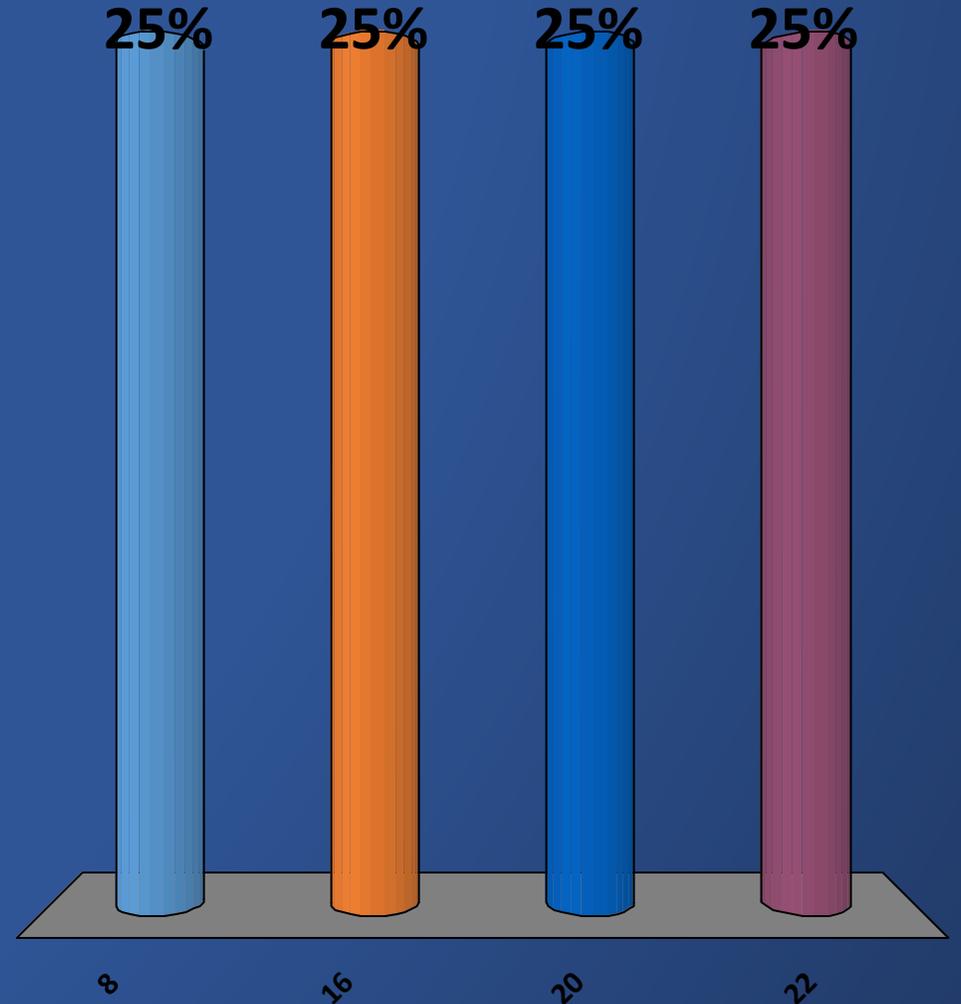
Illegal Reentry Scenario 6: The offense level is.....

- A. 8
- B. 16
- C. 20
- D. 24



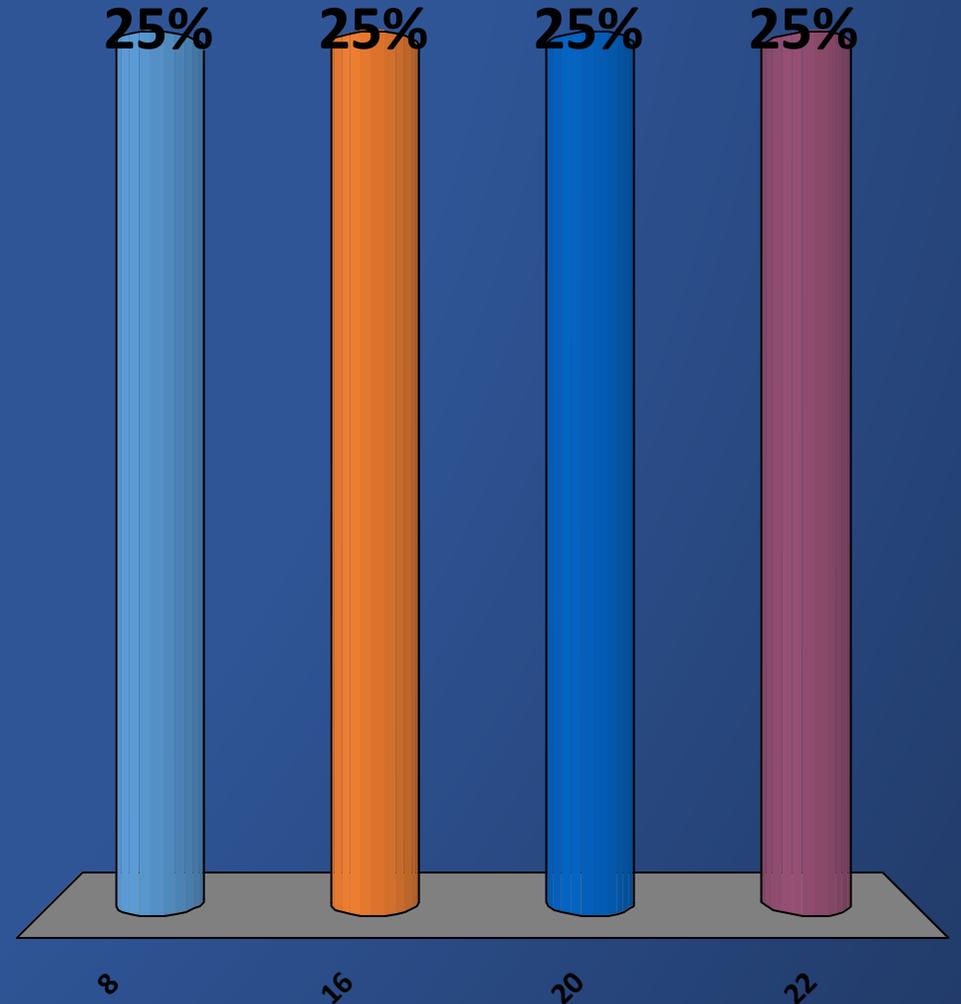
Illegal Reentry Scenario 7: The offense level is.....

- A. 8
- B. 16
- C. 20
- D. 22



Illegal Reentry Scenario 8: The offense level is.....

- A. 8
- B. 16
- C. 20
- D. 22



Departure Provisions

- Seriousness of the prior offense not reflected in enhancement
- Time served was substantially less than the sentence imposed for the offense
- Time served in state custody





Thank You!

Please don't forget to fill out an evaluation.



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