



Drugs



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§2D1.1 - Drugs

Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy

71,003 total cases in FY-2015; 21,340 sentenced under §2D1.1



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§2D1.1 Drug Trafficking, Etc.

(a) Base Offense Level (BOL) (apply the greatest):

Level

(1) defendant convicted under 21/841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 960(b)(1), (b)(2), or (b)(3), and conviction establishes death/serious injury from drug use; and committed after similar prior conviction

43

(2) defendant convicted under 21/841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 960(b)(1), (b)(2), or (b)(3), and conviction establishes death/serious injury from drug use

38



§2D1.1 Drug Trafficking, Etc. (cont.)

(a) Base Offense Level (BOL) (apply the greatest):

Level

(3) defendant convicted under 21/841(b)(1)(E) or 960(b)(5), and conviction establishes death/serious injury from drug use; and committed after similar prior conviction

30

(4) defendant convicted under 21/841(b)(1)(E), or 960(b)(5), and conviction establishes death/serious injury from drug use

26



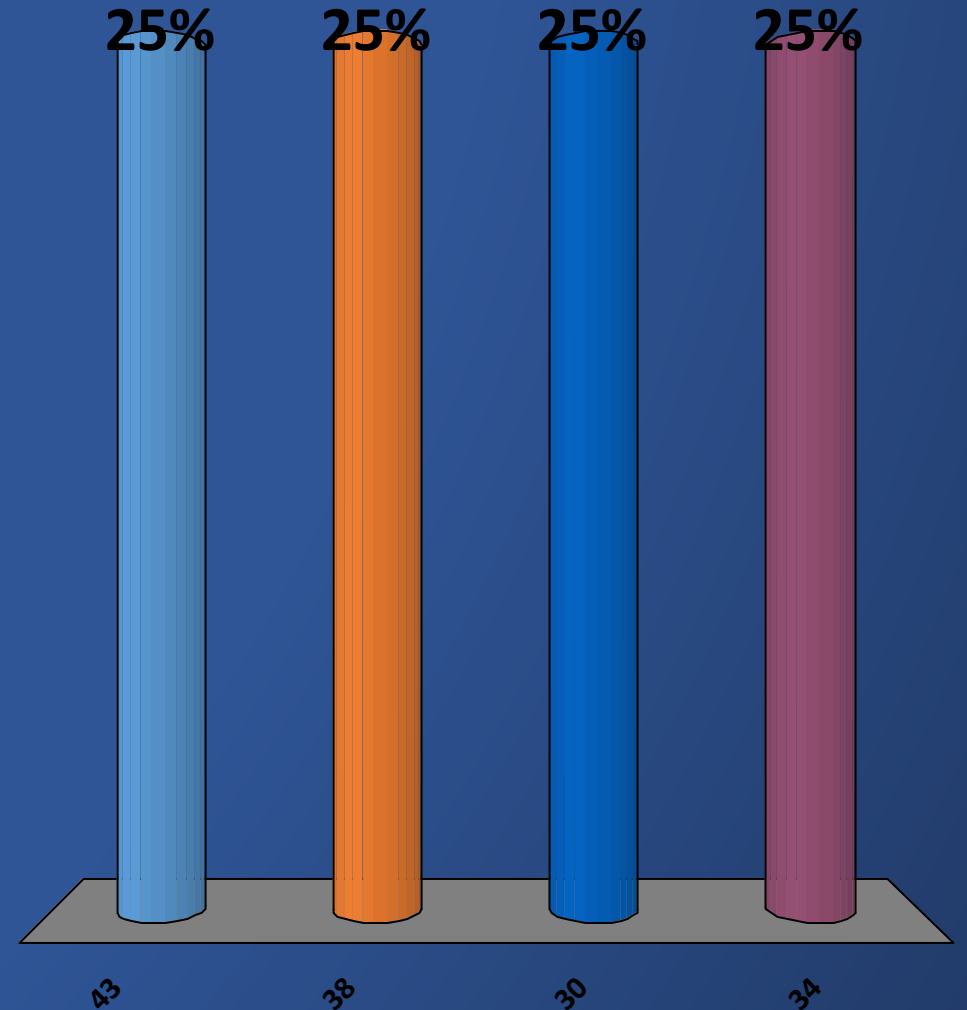
Scenario #1

- Defendant is convicted under 21 U.S.C. § 841(a)(1) and (b)(1)(A) for distributing at least 10 kg of heroin from January 2014-December 2015
- Defendant has two prior convictions for distribution of heroin that resulted in the death of 2 individuals
- The factual statement in the instant offense states that multiple individuals died as a result of the heroin that the defendant distributed



What is the defendant's base offense level at §2D1.1?

- A. 43
- B. 38
- C. 30
- D. 34



§2D1.1 Drug Trafficking, Etc. (cont.)

- (a) Base Offense Level (BOL) (apply the greatest):
- (5) the offense level from the Drug Quantity Table
EXCEPT if *mitigating* role (§3B1.2) applies:

<u>BOL</u>	<u>Reduction</u>
32	-2
34 or 36	-3
38	-4

If resulting BOL is greater than 32, and *minimal* role (§3B1.2(a)) applies, decrease to BOL 32



Example: §2D1.1 Drug Quantity Table Cocaine BOLS

450 KG	↑	Level 38
150 KG	↑	Level 36
50 KG	↑	Level 34
15 KG	↑	Level 32
5 KG	↑	Level 30
3.5 KG	↑	Level 28
2 KG	↑	Level 26



Example: §2D1.1 Drug Quantity Table Cocaine BOLS (cont.)

500 G	↑	Level 24
400 G	↑	Level 22
300 G	↑	Level 20
200 G	↑	Level 18
100 G	↑	Level 16
50 G	↑	Level 14
< 50 G	↑	Level 12



The Drug Guideline §2D1.1 and Relevant Conduct

§§2D1.1 & 1B1.3(a)(2)

- Relevant Conduct is “expanded” to include drug offenses in the same course of conduct or common scheme or plan as the offense of conviction for which the applicable Chapter Two guideline would also be §2D1.1 (or a similar guideline)
 - This does not require that there actually be multiple counts of conviction, however



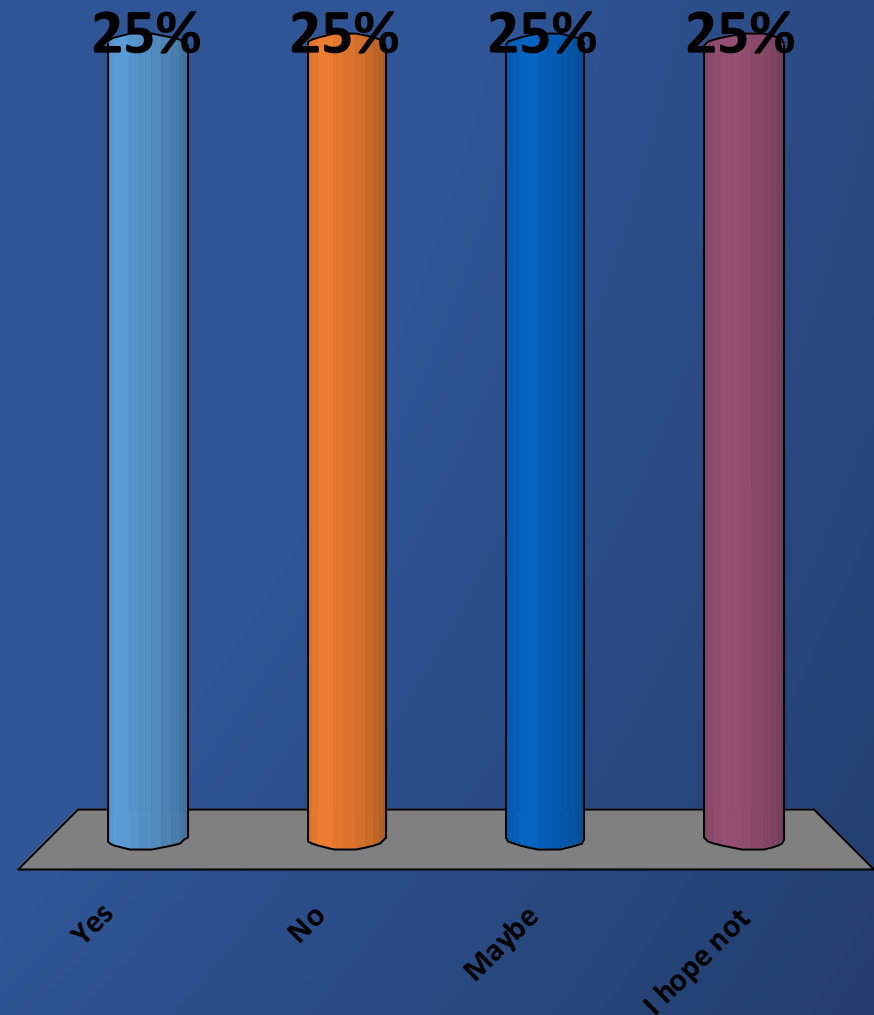
Scenario #2

- Defendant charged with Conspiracy to Distribute at least 2kg of Methamphetamine in violation of 21 U.S. C. § 841(a)(1) and (b)(1)(A)
- When the defendant was arrested, officers also found marijuana (1lb) and 2 bricks of heroin (2kg)
- Police have wire taps indicating that the defendant was selling marijuana and heroin (defendant also admits to selling marijuana and heroin)



Will the marijuana and heroin found at the time of the defendant's arrest be included in the drug quantity calculation at §2D1.1?

- A. Yes
- B. No
- C. Maybe
- D. I hope not



The Drug Guideline §2D1.1 and Relevant Conduct (cont.)

§§2D1.1 & 1B1.3(a)(1) and (a)(2)

- Relevant Conduct is an individualized determination for each defendant focused on the specific acts of the defendant, either alone or as part of a “jointly undertaken criminal activity”



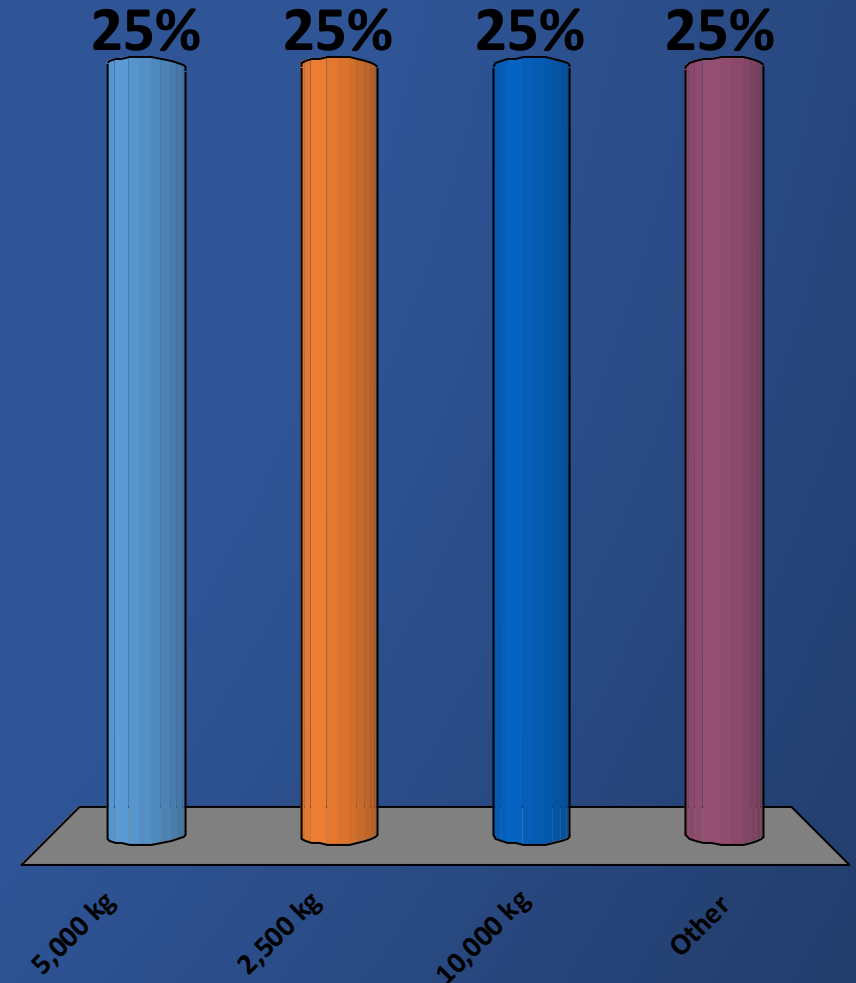
Scenario #3

- Three defendants convicted of a Drug Conspiracy involving 10,000 kg of Marijuana- §2D1.1.
- Defendant 1 lives in Minnesota, but owns a grow operation in CA. Defendant 2 lives in CA at the grow operation and is responsible for taking care of the plants, watering them, harvesting, etc. Defendant 3 lives in CO and has access to an airplane. He flew to CA on several occasions to pick-up the marijuana (total of 5, 000kg) and took it back to CO to distribute to his people.
- What amounts are attributable to each defendant?



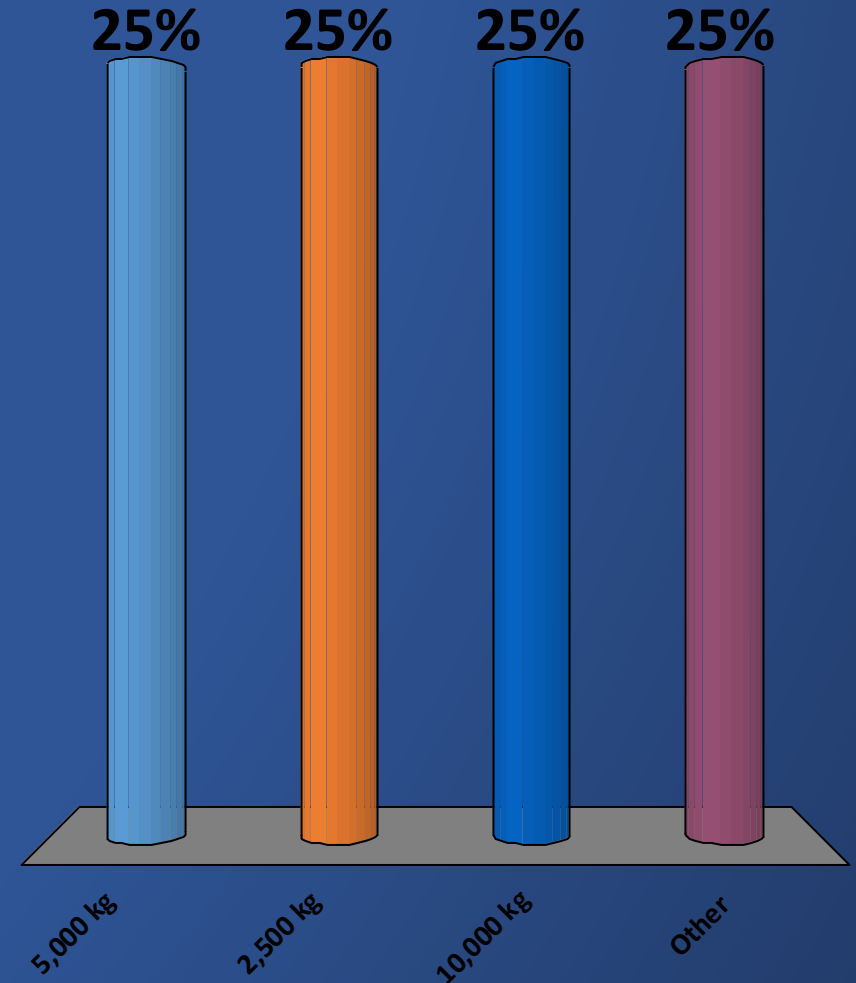
What quantity of marijuana is Defendant 1 accountable for?

- A. 5,000 kg
- B. 2,500 kg
- C. 10,000 kg
- D. Other



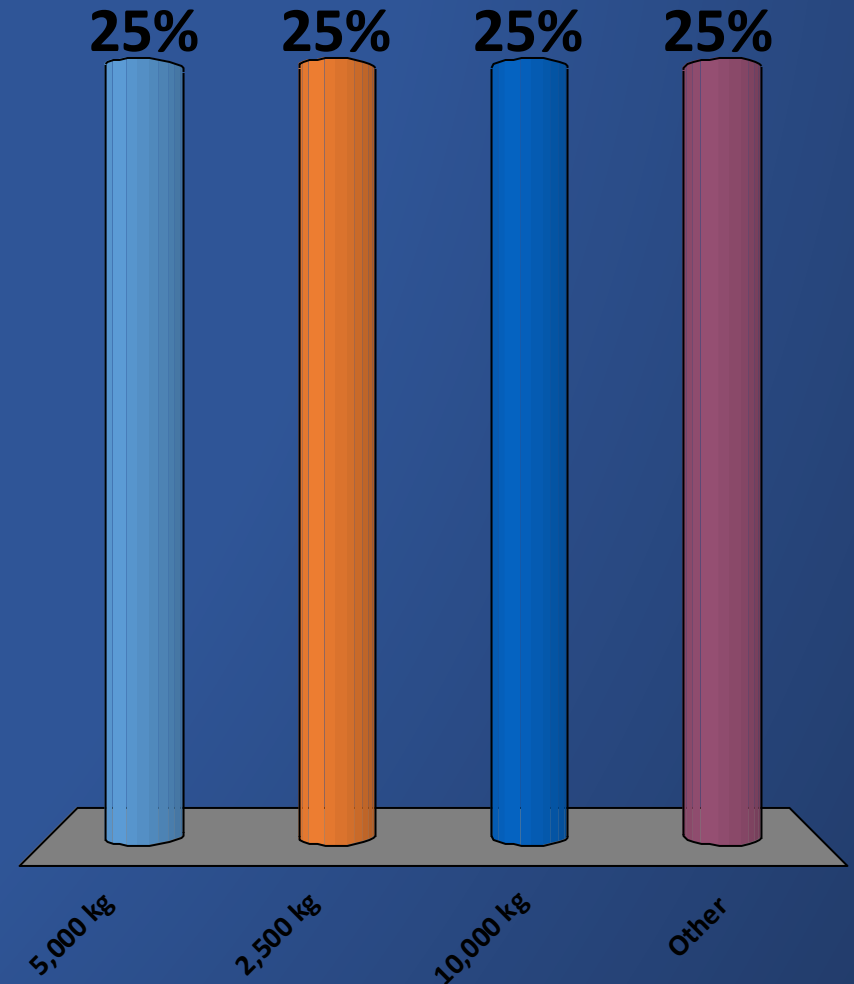
What quantity of marijuana is Defendant 2 accountable for?

- A. 5,000 kg
- B. 2,500 kg
- C. 10,000 kg
- D. Other



What quantity of marijuana is Defendant 3 accountable for?

- A. 5,000 kg
- B. 2,500 kg
- C. 10,000 kg
- D. Other



Weight of Controlled Substance

Note (A) to Drug Quantity Table

- *Unless otherwise specified*, the weight of a controlled substance refers to the entire weight of any mixture or substance containing a detectable amount of the controlled substance



Drug “Actual” (*i.e.*, Pure Drug)

Drug Quantity Table Notes (B) & (C)

- Drug purity is only factored for methamphetamine, amphetamine, “ice,” PCP, oxycodone, and hydrocodone
- For meth, amphetamine, and PCP, a comparison is made between the offense level for the drug “actual” and the offense level for the mixture or substance of the drug, and the greater is used



Drug *Equivalency* Tables

§2D1.1, App. Note 8

- Drugs **not** included on the Drug *Quantity* Table are converted to marijuana
 - *E.g.*, MDMA (“ecstasy”) 1 gm. = 500 gm. marijuana
- Different types of drugs are converted to marijuana so as to be added together
 - *E.g.*, cocaine and heroin



Example Involving Two Controlled Substances

- 450 gm of cocaine and 350 grams of heroin
- Cocaine and Heroin are each listed on the Drug Quantity Table
 - BOL 22 and BOL 24, respectively
- Must be converted to marijuana and combined together



Controlled Substances That Are Not Referenced in the Drug Guideline

§2D1.1, App. Note 6

- Determine the most closely related substance *that is referenced*, by considering the following
 - Similar chemical structure
 - Similar stimulant, depressant or hallucinogenic effect on the central nervous system
 - Lesser or greater quantity needed to produce a similar effect on the central nervous system



Scenario #4

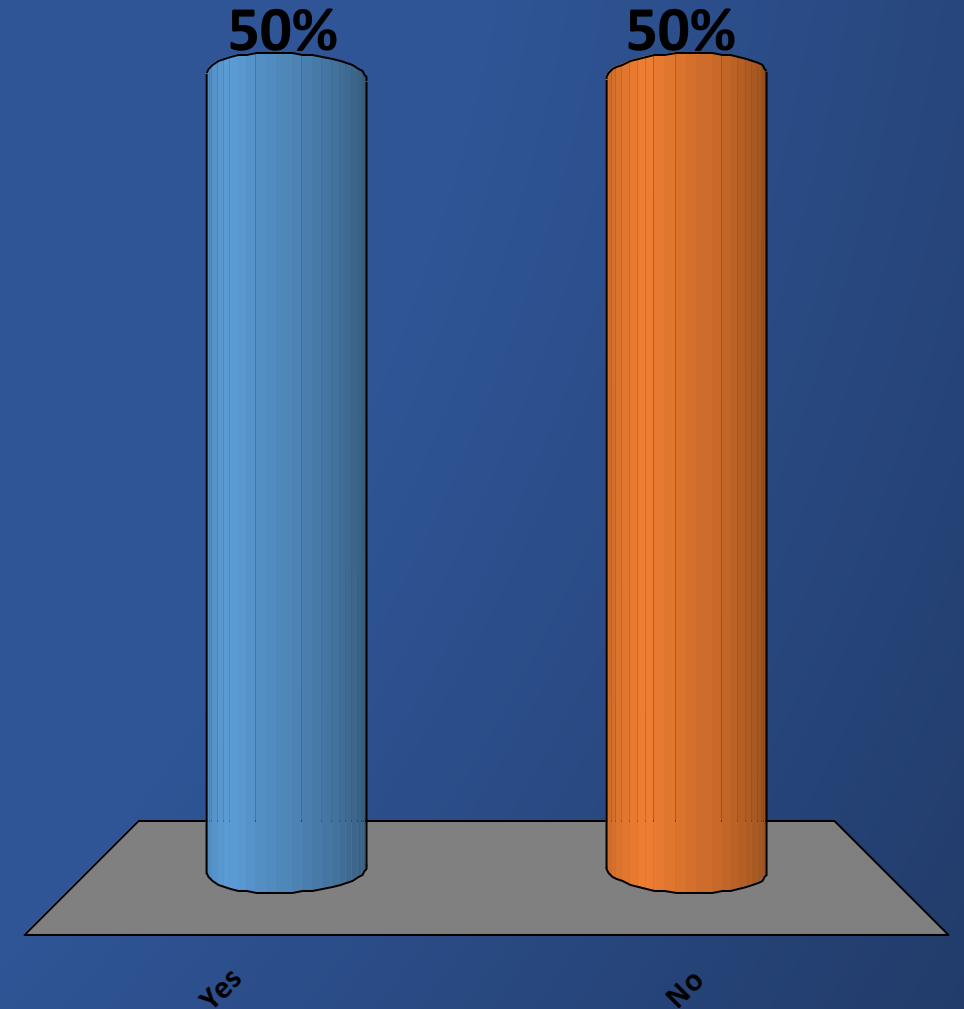
- Defendant convicted of Conspiracy to Distribute Alpha-pyrrolidinopentiophenone (a-PVP) in violation of 21 U.S.C. §§ 846 and 841(a)(1);(b)(1)(C)
- Defendant and her husband were selling large quantities of heroin, marijuana and “a-PVP”, a Schedule I substance commonly referred to as “bath salts”, from their home
- Defendant purchased the “a-PVP” from China through the internet



Is “a-PVP” referenced in the guideline at §2D1.1?

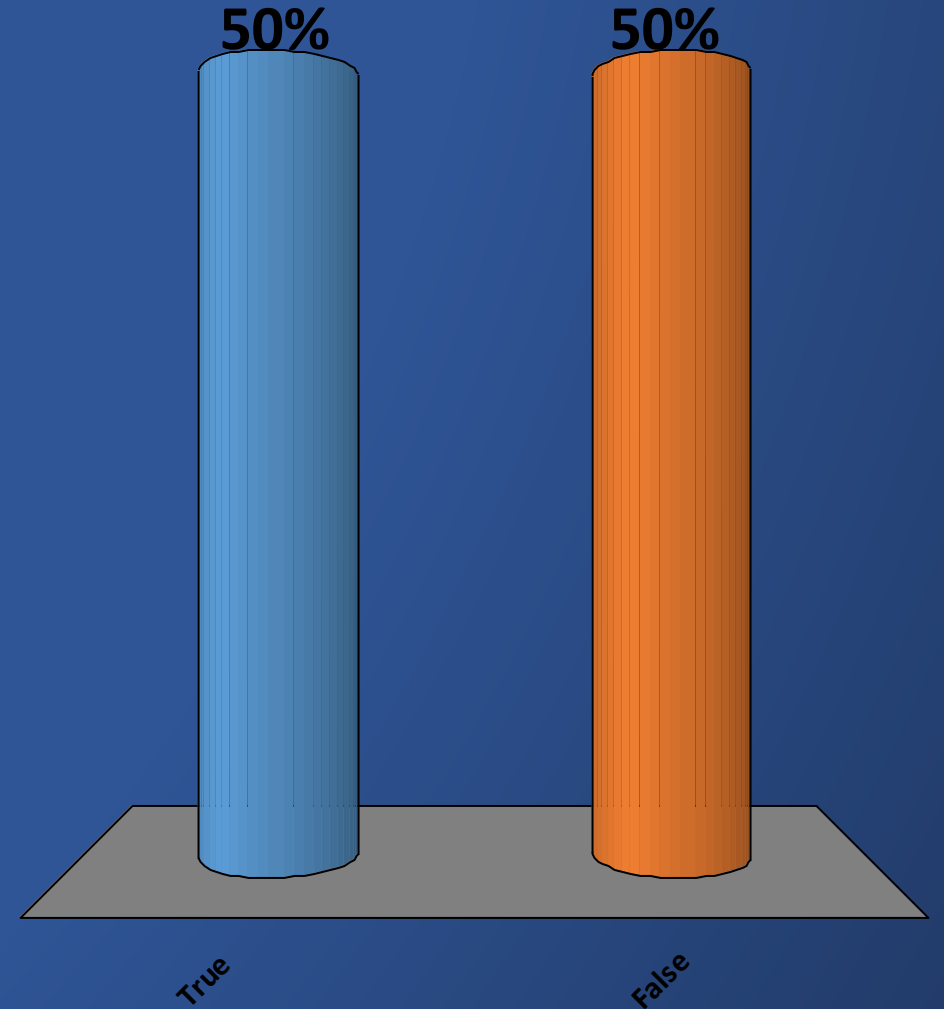
A. Yes

B. No



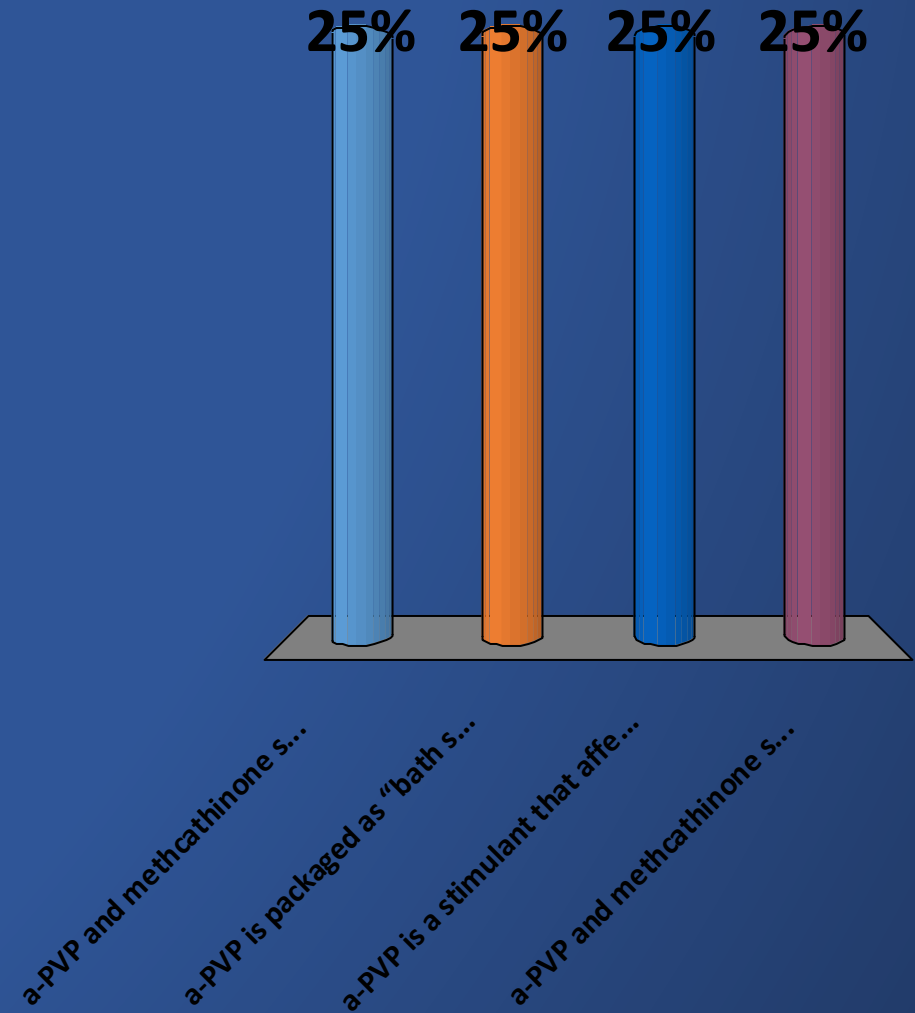
The court must determine the “most closely related controlled substance”.

- A. True
- B. False



Which of the following is NOT a factor the court can consider when determining the “most closely related controlled substance”?

- A. a-PVP and methcathinone share the same core chemical structure
- B. a-PVP is packaged as “bath salts”
- C. a-PVP is a stimulant that affects the CNS in a substantially similar manner as methcathinone
- D. a-PVP and methcathinone substitute for methamphetamine at approximately the same dosage



Scenario #5

- Defendant is convicted of Conspiracy to Possess with Intent to Distribute and Distribution of "UR-144," and "XLR-11," Each a Schedule I Controlled Substance Analogue, in violation of 21 U.S.C. §§ 846 and 802(32).
- Defendant was the owner of a smoke shop called Twisted Headz and sold packages of synthetic cannabinoids called "Extreme Rampage" commonly known as "spice"

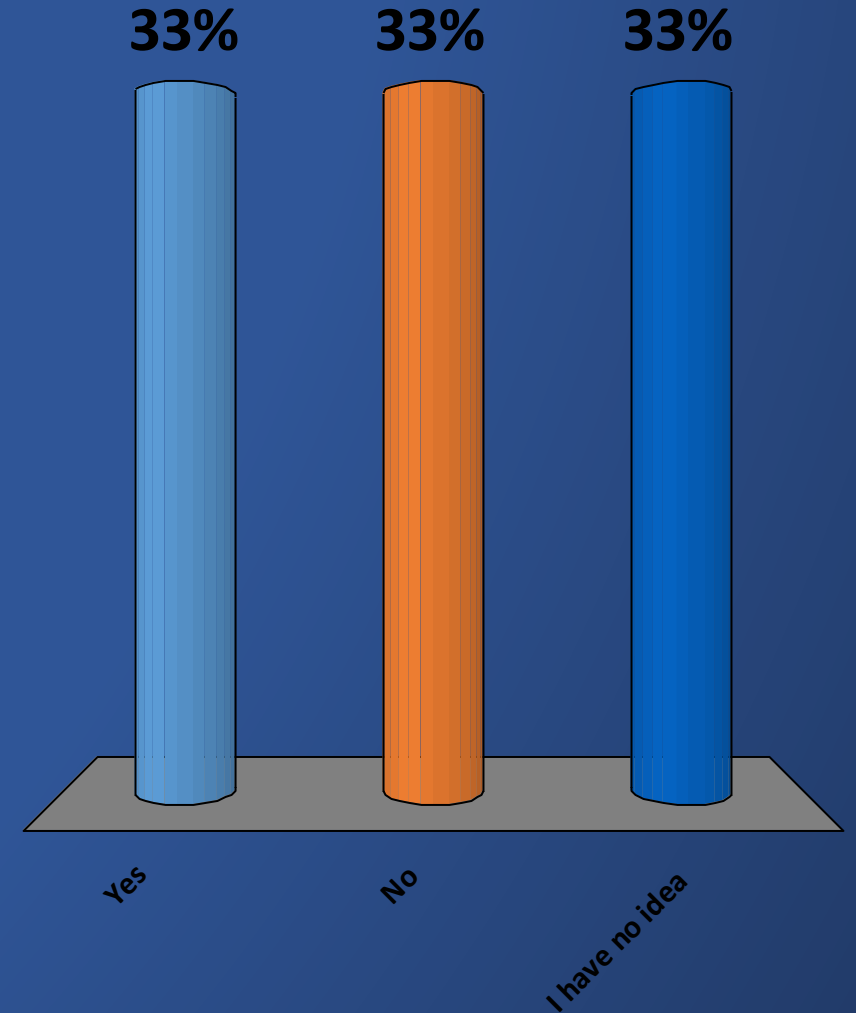


Is "UR-144" or "XLR-11" referenced in the guideline at §2D1.1?

A. Yes

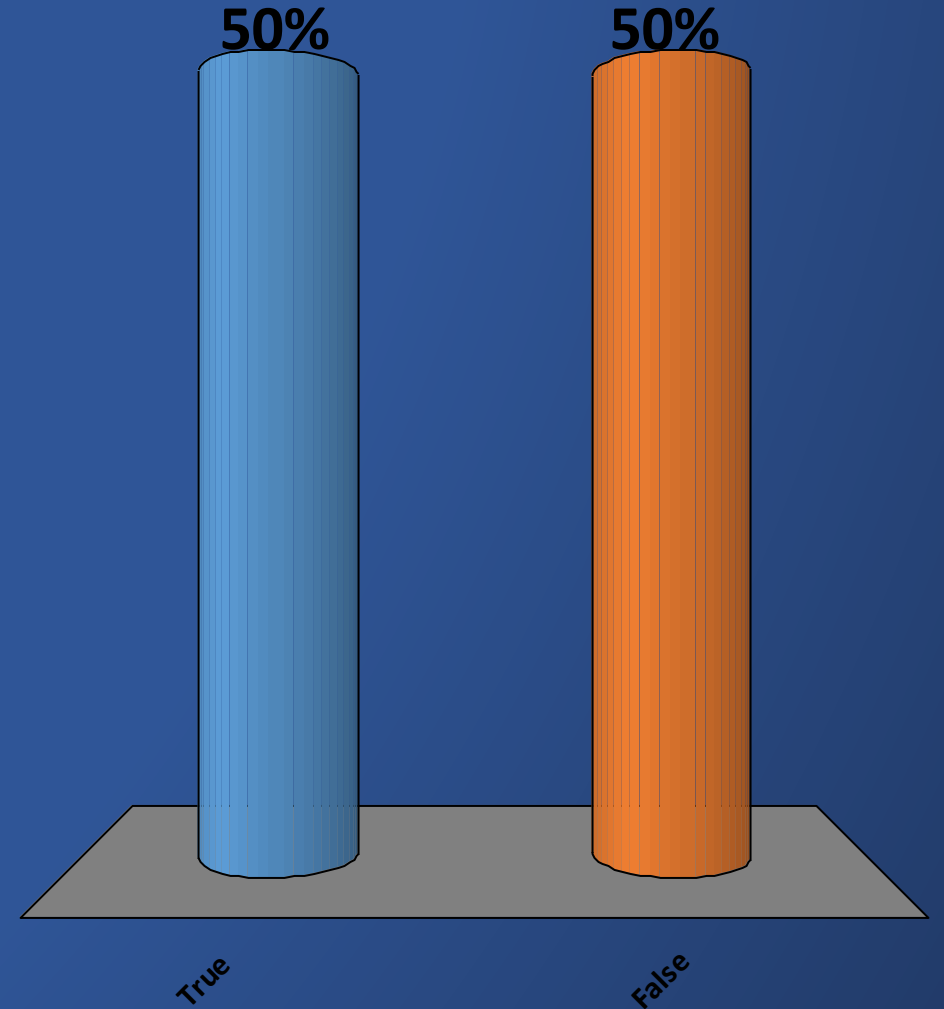
B. No

C. I have no idea



The court must determine the “most closely related controlled substance”.

- A. True
- B. False



What about other substances that are not referenced at §2D1.1?

- Commission priority
 - Study ofsynthetic cannabinoids (such as JWH-018 and AM-2201), and synthetic cathinones (such as Methylone, MDPV, and Mephedrone) and consideration of any amendments to the Guidelines Manual that may be appropriate in light of the information obtained from such study.



§2D1.1 Specific Offense Characteristics

- The most frequently applied SOCs at §2D1.1
 - (b)(1) Firearm/Dangerous Weapon – 13.0%
 - (b)(17) “Safety Valve” Subdivision Criteria – 28.0%

Only two other SOCs at §2D1.1 are applied in more than 1% of drug cases:
(b)(5) Importation re: meth – 3.1%; (b)(12) Maintaining a premises – 5.0%

Nationally - FY-2015 Sentencing Data



§2D1.1(b)(12) “Maintaining a Premises”

If the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance, increase by 2 levels.

- Defendant must knowingly maintain a premises (i.e. a building, room, or enclosure)
- Court to look at whether the defendant had a possessory interest in the premises and the extent to which the defendant controlled access to or activities at the premises



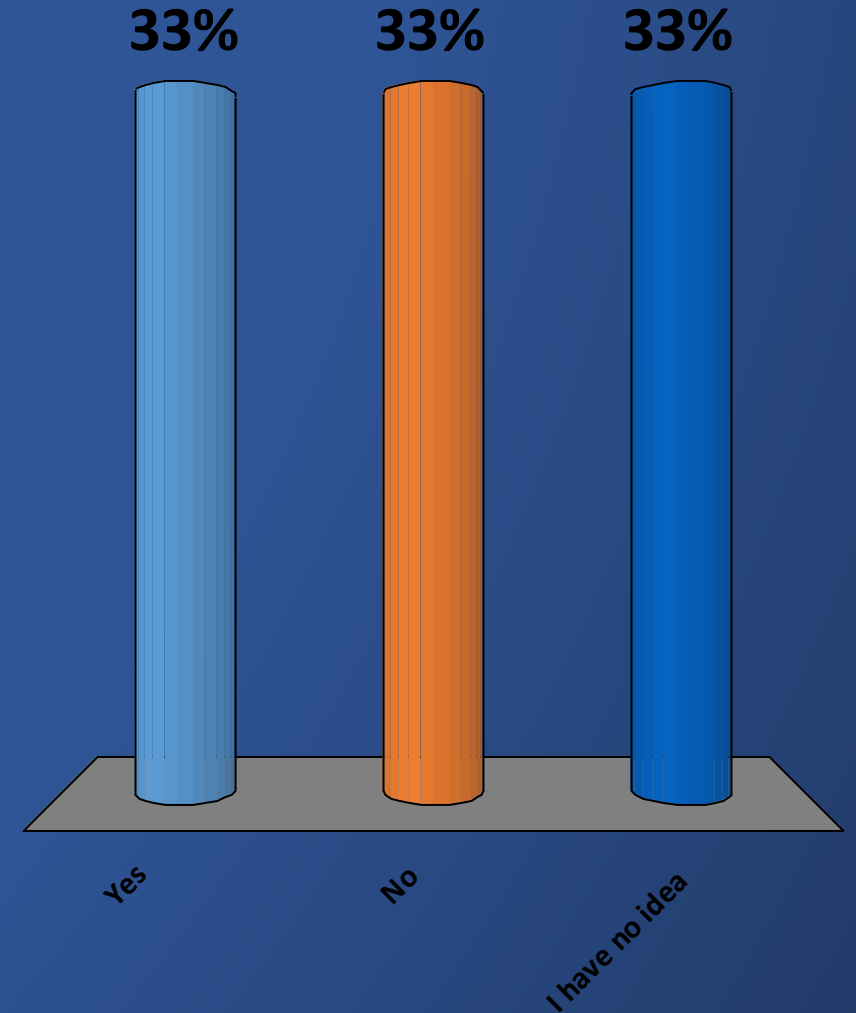
Scenario #6

- Defendant in a drug conspiracy regularly picked up his drugs to sell from a storage unit at a storage facility
- When the storage unit was searched, agents found drug proceeds, ledgers regarding the conspiracy and refrigerators containing marijuana



Would you apply §2D1.1(b)(12) for “maintaining a premises”?

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



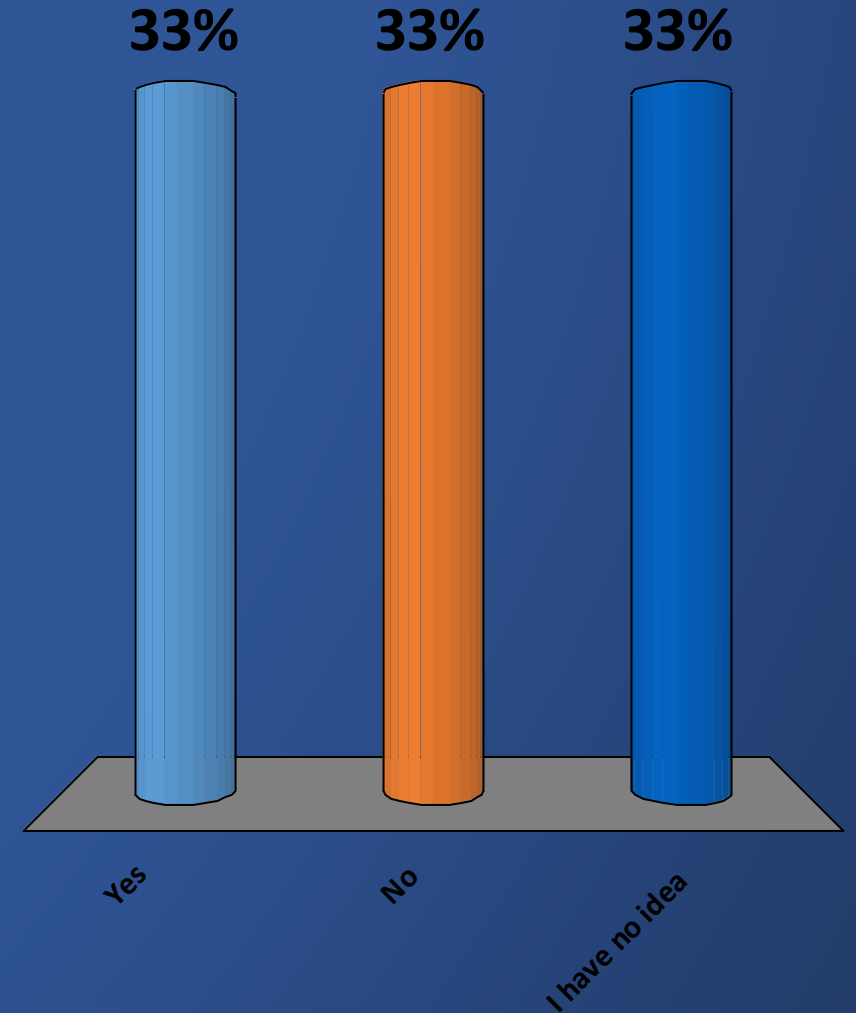
Scenario #6 (cont)

- Defendant in a drug conspiracy regularly picked up his drugs to sell from a storage unit at a storage facility
- Further investigation revealed that the defendant rented the storage unit in his name
- When the storage unit was searched, agents found drug proceeds, ledgers regarding the conspiracy and refrigerators containing marijuana



Would you apply §2D1.1(b)(12) for “maintaining a premises”?

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



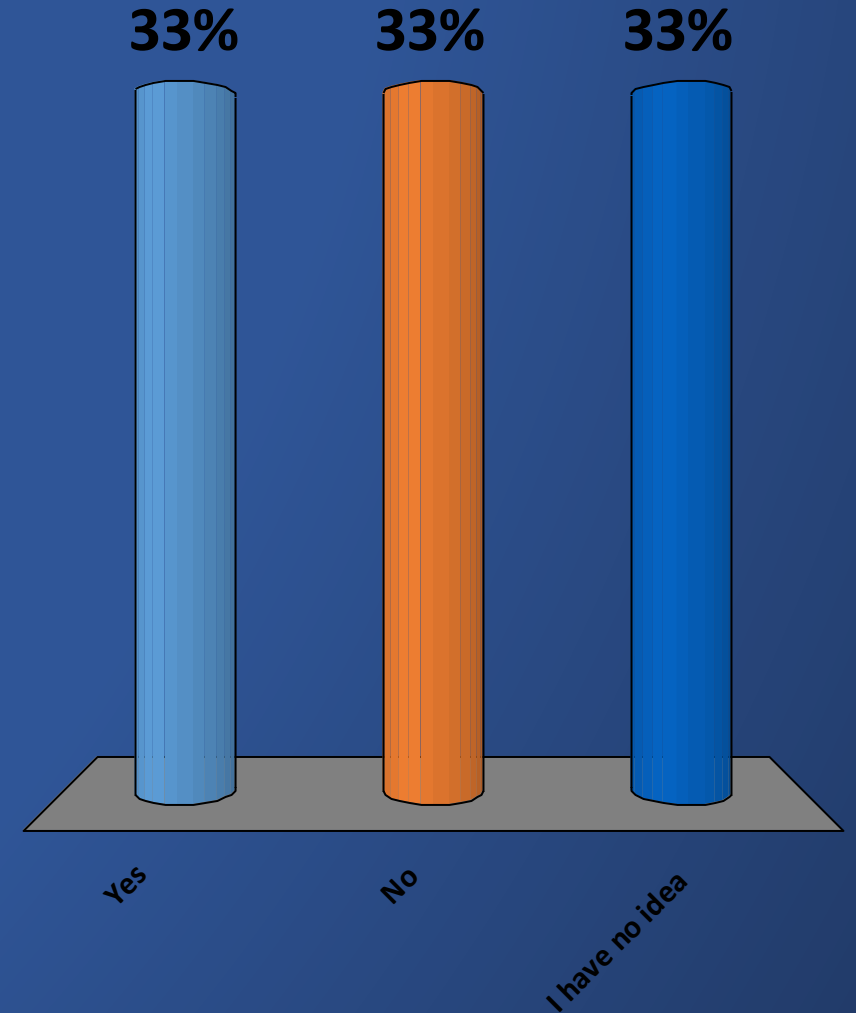
Scenario #7

- Defendant's boyfriend was a drug dealer who had a house that was used solely to receive shipments of drugs
- There was no distribution of drugs that occurred at the house
- Neither the defendant nor her boyfriend lived in the house



Would you apply §2D1.1(b)(12) for “maintaining a premises”?

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



Scenario #7 (cont)

- Defendant's boyfriend was a drug dealer who had a house that was used solely to receive shipments of drugs
- There was no distribution of drugs that occurred at the house
- Neither the defendant nor her boyfriend lived in the house, but the defendant and her boyfriend were named on the lease as renters



§2D1.1(b) Specific Offense Characteristics

	<u>Level</u>
(1) firearm, dangerous weapon possessed	+2

(17) if defendant meets the <u>subdivision criteria</u> (1)-(5) of §5C1.2(a) (“the safety valve”)	-2



SOC (b)(17) at §2D1.1: “The Safety Valve SOC”

2-Level Decrease

- The defendant must only meet the criteria set forth in **subdivisions (1)-(5)** of subsection (a) of §5C1.2 (“The Safety Valve”)



§5C1.2(a)

Subdivisions (1) – (5)

1. Defendant does not have more than 1 Criminal History Point
2. Defendant did not use violence/threats of violence or possess a firearm or other dangerous weapon in connection with the offense
3. Offense did not result in death or serious bodily injury



4. Defendant was not an organizer/leader/manager/supervisor of others in the offense; was not engaged in a CCE

5. Not later than the time of the sentencing hearing, defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or common scheme or plan.



Scenario #8

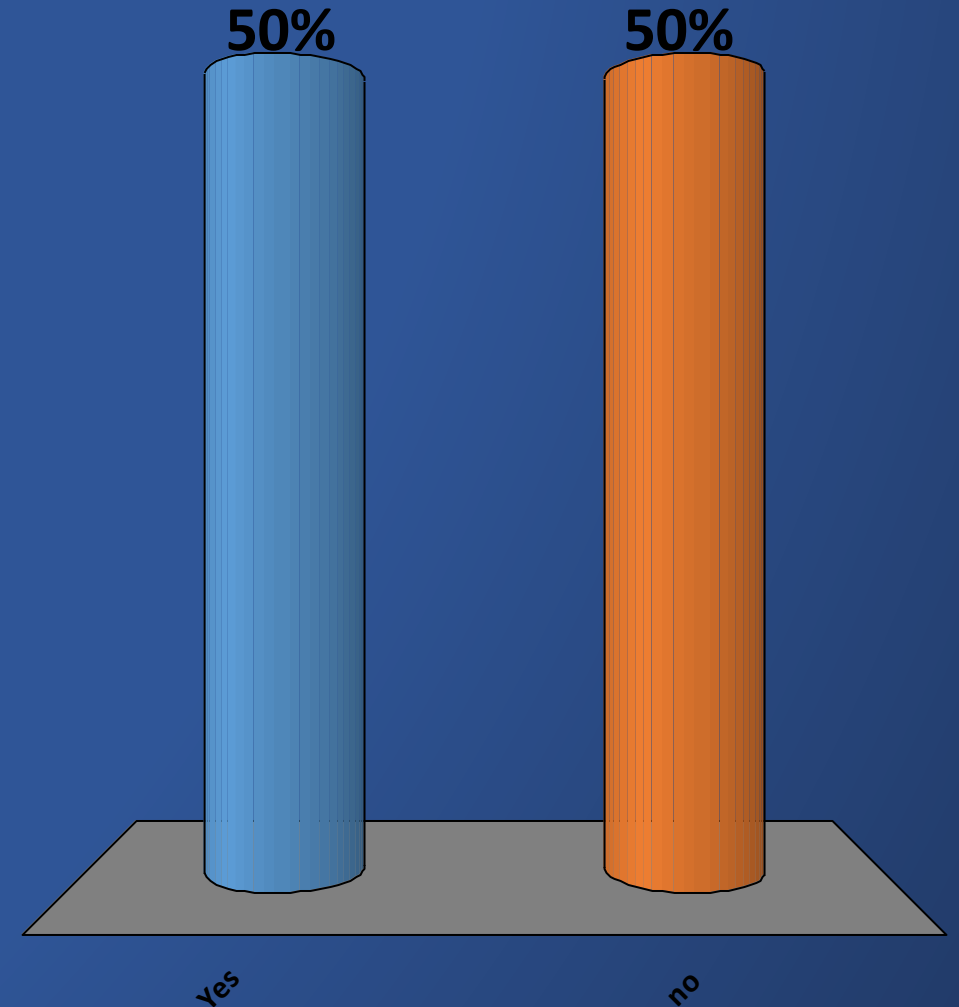
- Defendant convicted of Distribution of 20 gm of Heroin in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C)- 0-20 years imprisonment
- Defendant has no prior criminal history
- Defendant did not carry a gun
- Defendant was arrested after being pulled over for a traffic stop at which point he told authorities that he was paid \$500 to deliver the Heroin to a man named “Joe”
- Defendant cooperated fully with the authorities and the government



Does the defendant receive the 2-level reduction at §2D1.1(b)(17)?

A. Yes

B. no





“Safety Valve”

18 USC § 3553(f)
& §5C1.2



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“Safety Valve”

18 U.S.C. § 3553(f)

- Court makes determination; no government motion required
- Sentence without regard to mandatory minimums for violations of select drug statutes
- Downward departures for mitigating factors or variances possible



“Safety Valve”

§5C1.2(a)

In the case of an **offense subject to a mandatory minimum** sentence under **21 U.S.C. §§ 841, 844, 846, 960, or 963**, the court shall impose a sentence in accordance with the applicable guidelines without regard to any statutory minimum sentence, if the court finds the defendant meets the criteria set forth below:



Scenario #9

- Defendant convicted of Conspiracy to distribute 500 grams of Cocaine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B)- 5-40 years imprisonment
- Defendant made several deliveries with a co-defendant who was armed during the transactions (co-defendant was responsible for the bulk of the deliveries on his own)
- Defendant has no prior criminal history
- Defendant waited until the day of sentencing to debrief with the government, but otherwise truthfully provided all information that he had



Does the defendant qualify for relief from the mandatory minimum pursuant to 18 U.S.C. § 3553(f)?

- A. Yes
- B. No

