



Advanced Criminal History – Chapter 4

Wednesday, May 31, 2017

Baltimore, MD



Presenters

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Commission Resources



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Session Objectives

- Single-Separate determination regarding treatment of multiple prior sentences
- Revocations of supervision
- “Overrides” of criminal history, e.g., Career Offender
- Scenarios



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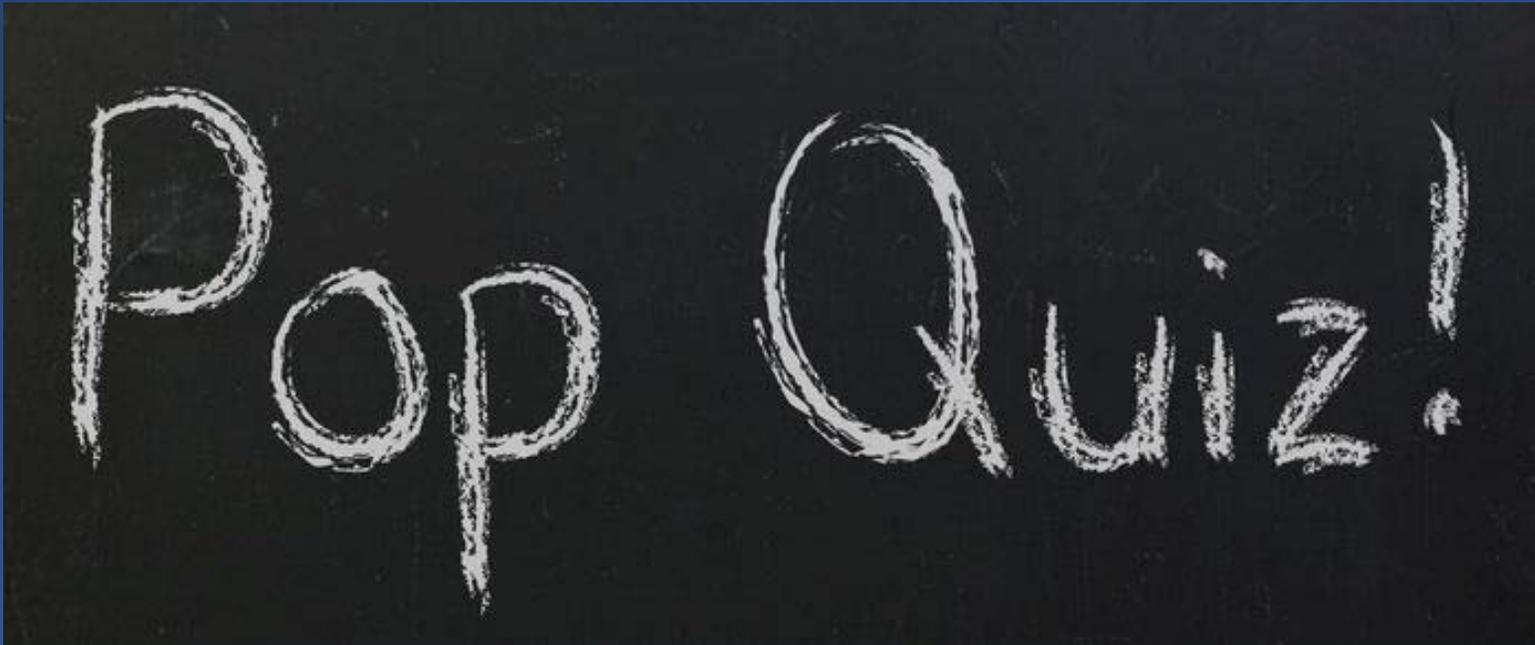


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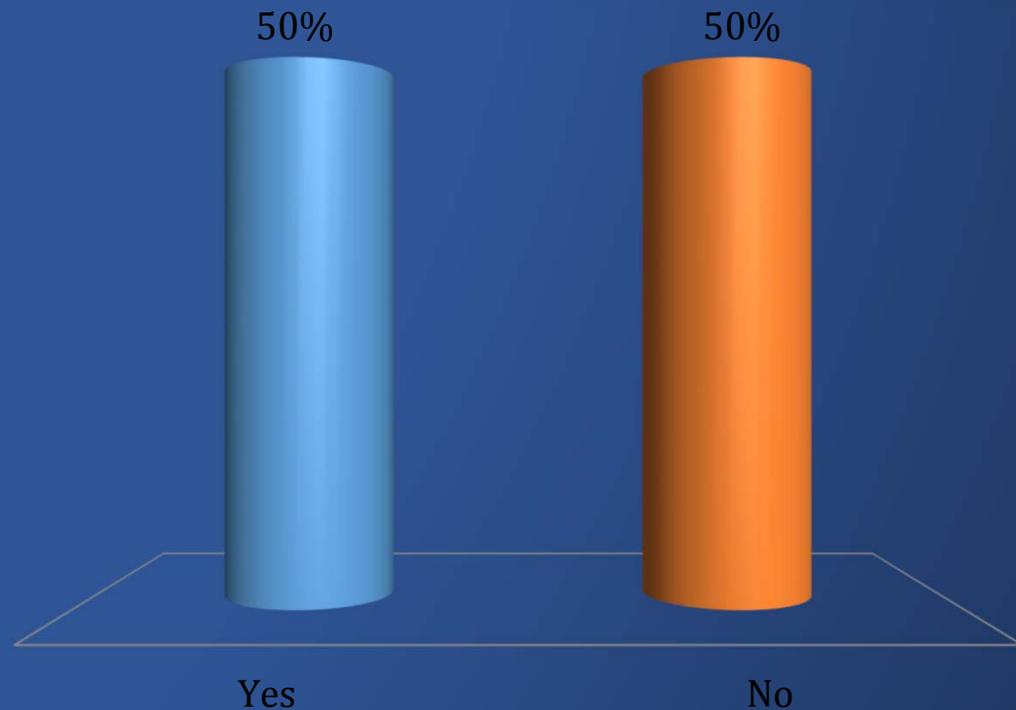
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Scenario#1: Defendant was given a civil law violation ticket for Possession of less than 10 Grams of Marijuana. Is this a conviction that results in criminal history points?

- A. Yes
- B. No



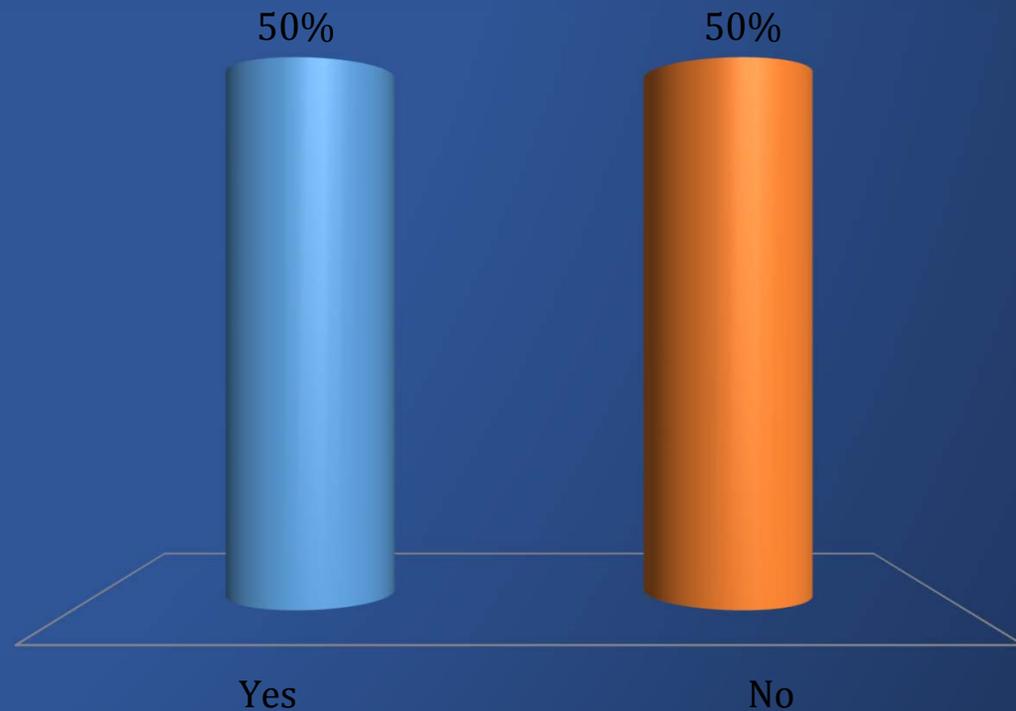
Criminal History Exercise #2

<u>Arrest Date</u>	<u>Charge/Docket #</u>	<u>Date/Sent. Imposed</u>
02/07/05	Sale of Heroin, Montgomery County District Ct. Dayton, OH,	04/07/05: 2 years imprisonment
02/07/07	Trafficking Cocaine, Montgomery County District Ct. Dayton, OH,	04/07/07: 4 years imprisonment



Defendant pled guilty to a drug conspiracy that occurred from 2009 through 2015. Defendant has two prior state convictions for drug trafficking for which he was sentenced prior to the instant offense of conviction.

- A. Yes
- B. No

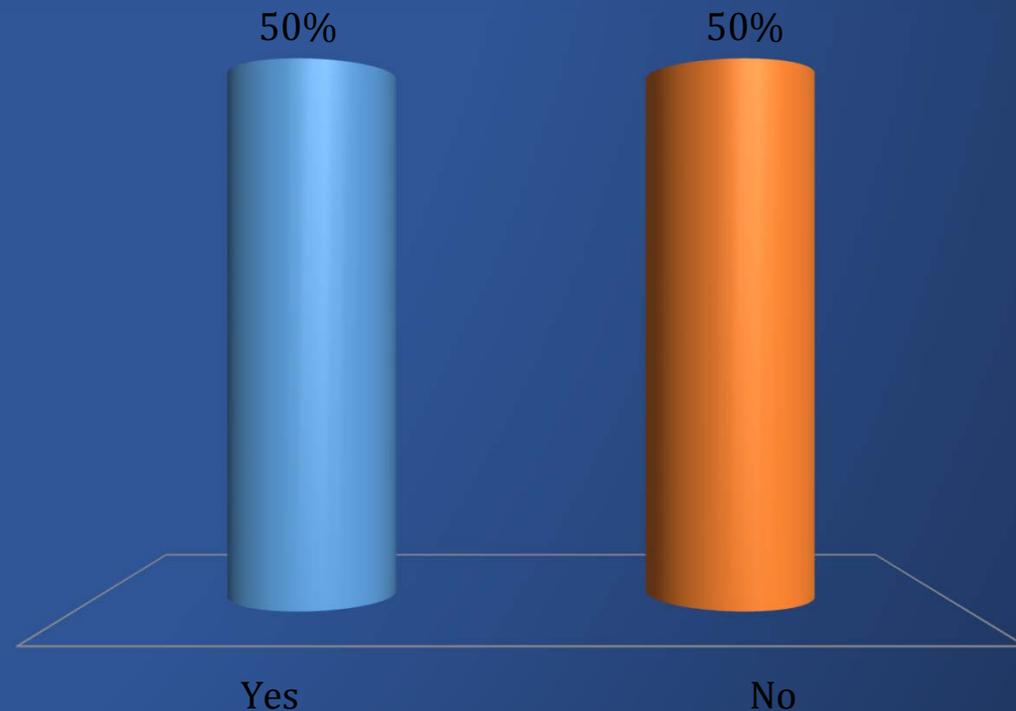


Scenario#3: Defendant was sentenced to 20 years in prison in 2000. He was pardoned in 2012 and completed TSR in 2015. He was arrested and convicted for drug trafficking in 2017.

Does the pardoned conviction count for criminal history purposes?

A. Yes

B. No



Criminal History Exercise #4

Arrest Date:
11/24/2007

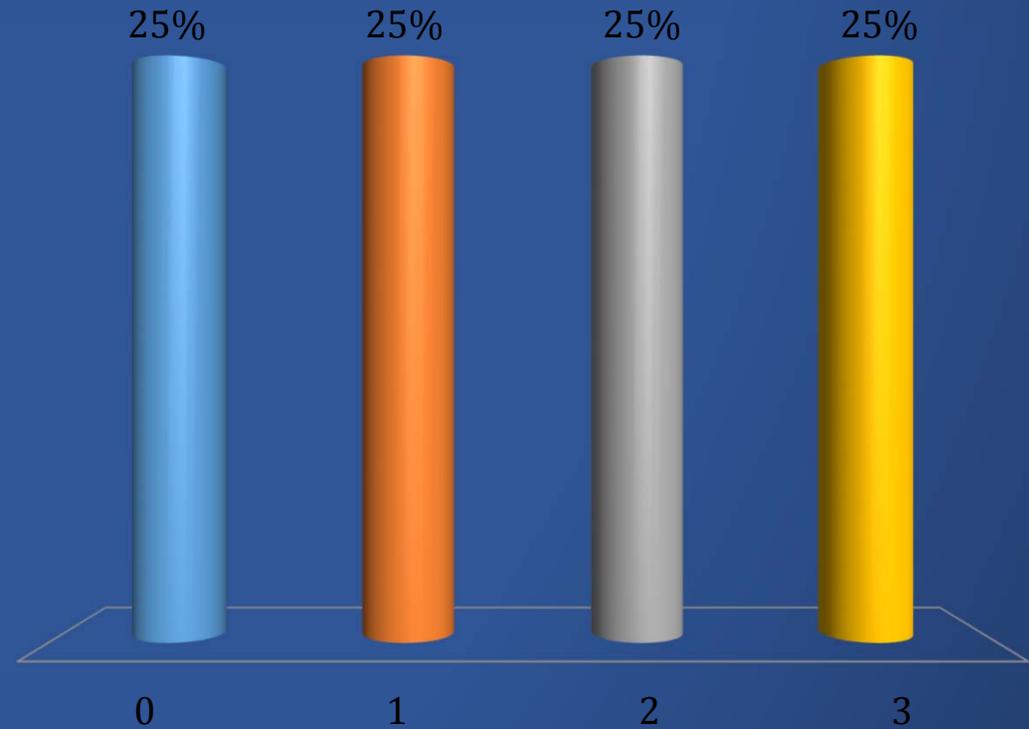
Charge/Docket #
Ct. 1: Theft (Misd.);
Ct. 2: DWI (Felony)
Rutherford County
Criminal Court,
Murfreesboro, TN

Date/Sent. Imposed
06/26/09: Ct. 1: 1 year
jail
Ct. 2: 60 days jail, to be
served consecutive to
one another



How many criminal history points?

- A. 0
- B. 1
- C. 2
- D. 3





Treatment of Multiple Prior Sentences

§4A1.2(a)(2)

- Requires a determination of whether multiple prior sentences are counted “separately” or as a “single sentence”



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Threshold Determination: Intervening Arrest

§4A1.2(a)(2)

Multiple prior sentences for
offenses separated by an
intervening arrest are counted
separately



Examples: Separated by Intervening Arrest

offense
arrested
offense
arrested

**Intervening
Arrest**

offense
offense
offense
arrested

**Not an
Intervening
Arrest**



Single Sentence Criteria

§4A1.2(a)(2)

- Multiple prior sentences will be treated as a “single sentence” *if*
 1. Prior sentences are for offenses **NOT** separated by an intervening arrest

AND
 2. The offenses *either*
 - Were named in the same charging document, *or*
 - Resulted in sentences imposed on the same day



Impact of a “Single Sentence”

§4A1.2(a)(2)

Rather than add points for each prior sentence:

- If concurrent sentences
 - Use the longest sentence
- If consecutive sentences
 - Use the aggregate length of the sentences



Example: Point Assignments and “Single” Sentences

<u>Length</u>	<u>Point Assignments</u>	
	<u>“Single Sentence”</u>	<u>Counted Separately</u>
1 mo.		1 pt.
4 mos. consec.	}	2 pts.
<u>9 mos. consec.</u>		<u>2 pts.</u>
14 mos.		3 pts.



Example: Point Assignments and “Single” Sentences

<u>Length</u>	<u>Point Assignments</u>	
	<u>“Single Sentence”</u>	<u>Counted Separately</u>
1 mo.		1 pt.
4 mos. concur.	}	2 pts.
<u>9 mos. concur.</u>		<u>2 pts.</u>
9 mos.	2 pts.	5 pts.



Examples: Separated by Intervening Arrest

Theft 1 offense
Arrested Theft 1
Theft 2 offense
Arrested Theft 2

**Intervening
Arrest for
Thefts 1 & 2**

Theft 1 offense
Arrested DUI
Theft 2 offense
Arrested Thefts 1 & 2

**Not an
Intervening
Arrest for
Thefts 1 & 2**



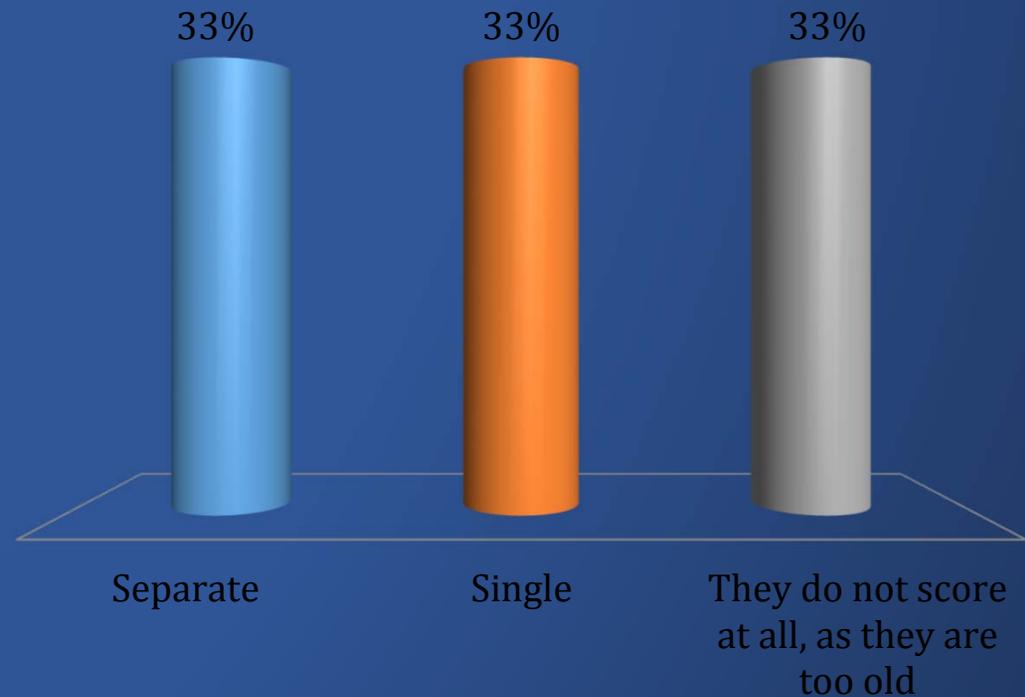
Criminal History Exercise #5

<u>Arrest Date</u>	<u>Charge/Docket #</u>	<u>Date/Sent. Imposed</u>
02/07/03 (Age 18)	Burglary, Montgomery County District Ct. Dayton, OH, Case#2003- CR-411	04/07/03: 4 to 15 yrs. imprisonment consecutive to Case#2003-CR-805
02/07/03 (Age 18)	Burglary, Montgomery County District Ct. Dayton, OH, Case#2003- CR-805	04/07/03: 4 to 15 yrs. imprisonment consecutive to Case# 2003-CR-411



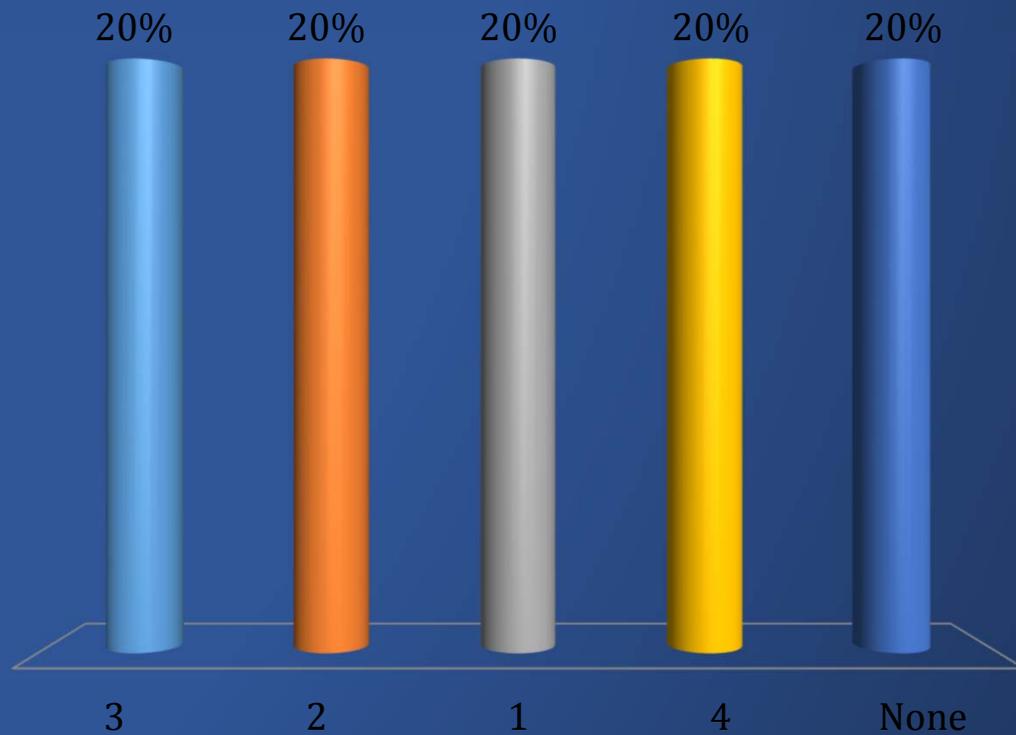
Are these sentences scored separately or as a single sentence?

- A. Separate
- B. Single
- C. They do not score at all, as they are too old



How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. 4
- E. None



Criminal History Exercise #6

Arrest Date: *

**01/19/10
(Age 24)**

**11/25/11
(Age 24)**

***Warrant issued by the state
for attempted murder and
possession of gun by felon on
12/20/09**

Charge/Docket #

**Felon in possession of
firearm, Miami FL, U.S.
District Ct. (SD/FL)**

**Felon in possession of
firearm, Miami Dade
County District Court,
Miami Florida**

Date/Sent. Imposed

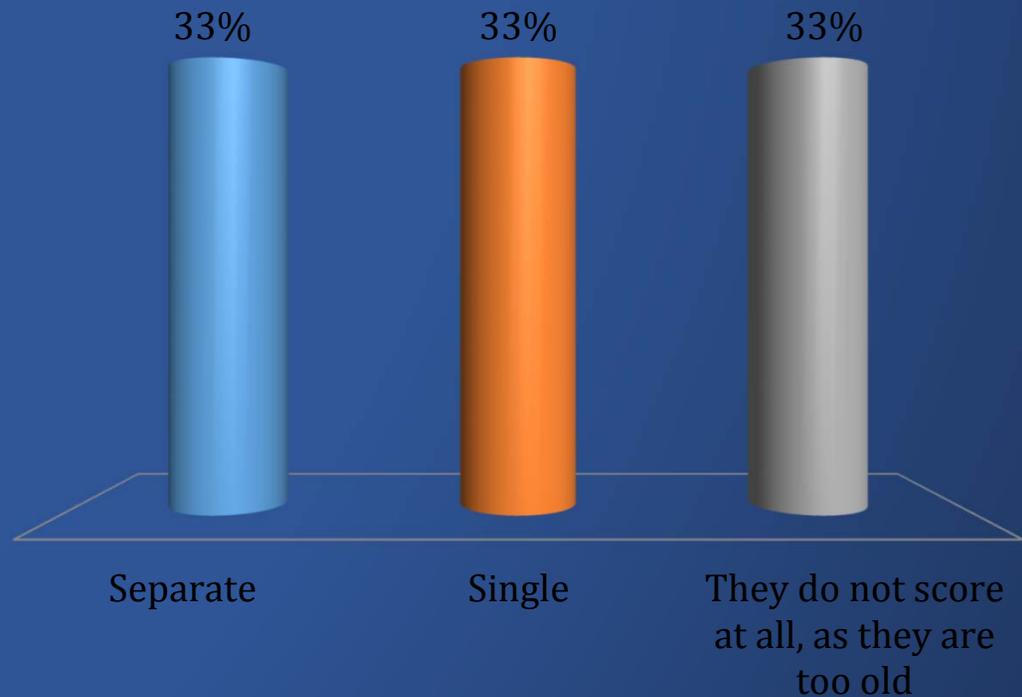
**08/20/10: 14 months
BOP custody, 2 yrs. SR**

**01/14/12: 6 months
custody DOC**



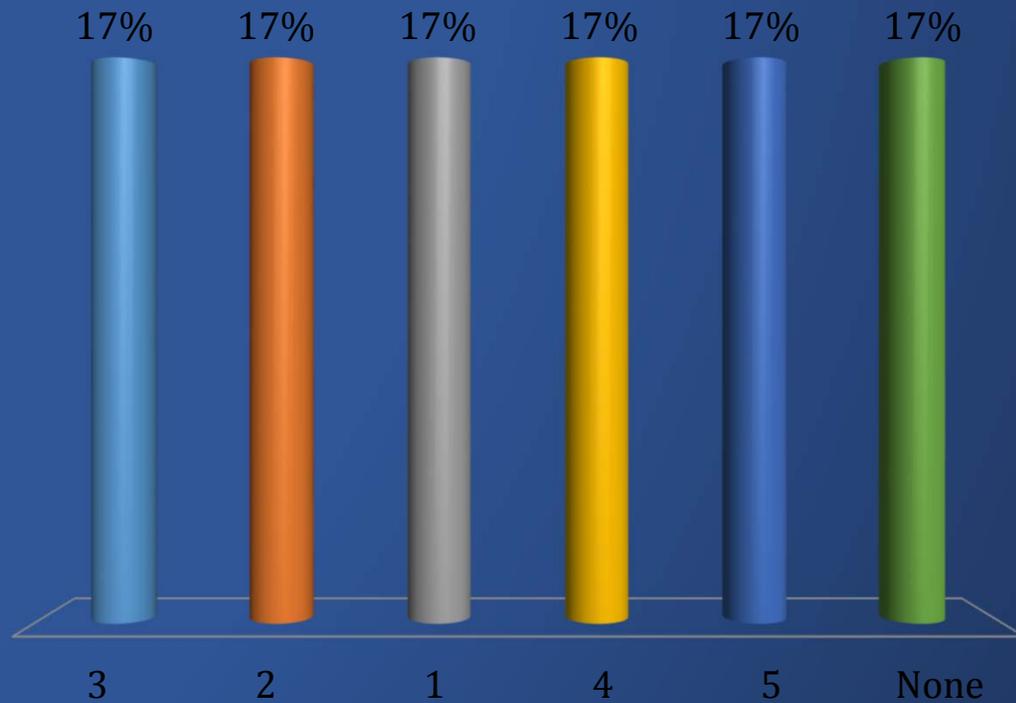
Are these sentences score separately or as a single sentence?

- A. Separate
- B. Single
- C. They do not score at all, as they are too old



How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. 4
- E. 5
- F. None



A “Single Sentence” That Includes Crimes of Violence

§4A1.1(e)

- When multiple prior sentences are treated as a “single sentence,” §4A1.1(e) adds 1 point for each crime of violence that did not result in additional points under §4A1.1(a), (b), or (c)



Criminal History Exercise #7

Arrest Date:

**05/06/09
(Age 20)**

**05/06/09
(Age 20)**

Charge/Docket #

**Aggravated Robbery
(Case# 09-432);
Rutherford County
Criminal Court,
Murfreesboro, TN**

**Aggravated Robbery
(Case# 09-433);
Rutherford County
Criminal Court,
Murfreesboro, TN**

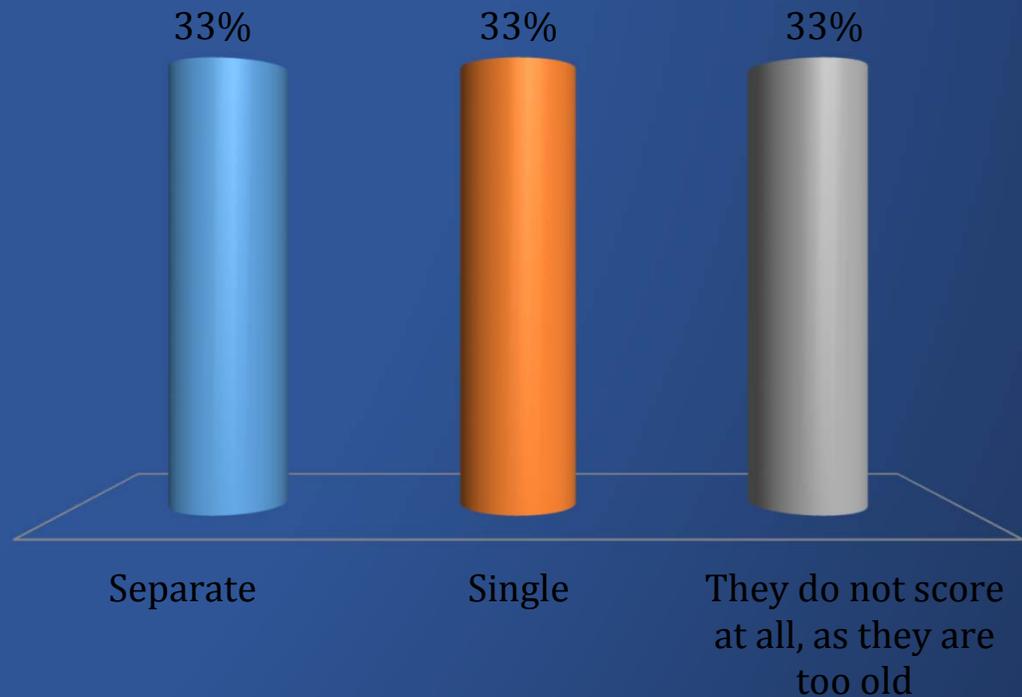
Date/Sent. Imposed

**06/26/09: 1 year
custody, consecutive to
Case # 09-433**

**06/26/09: 9 months'
custody, consecutive to
Case # 09-432**

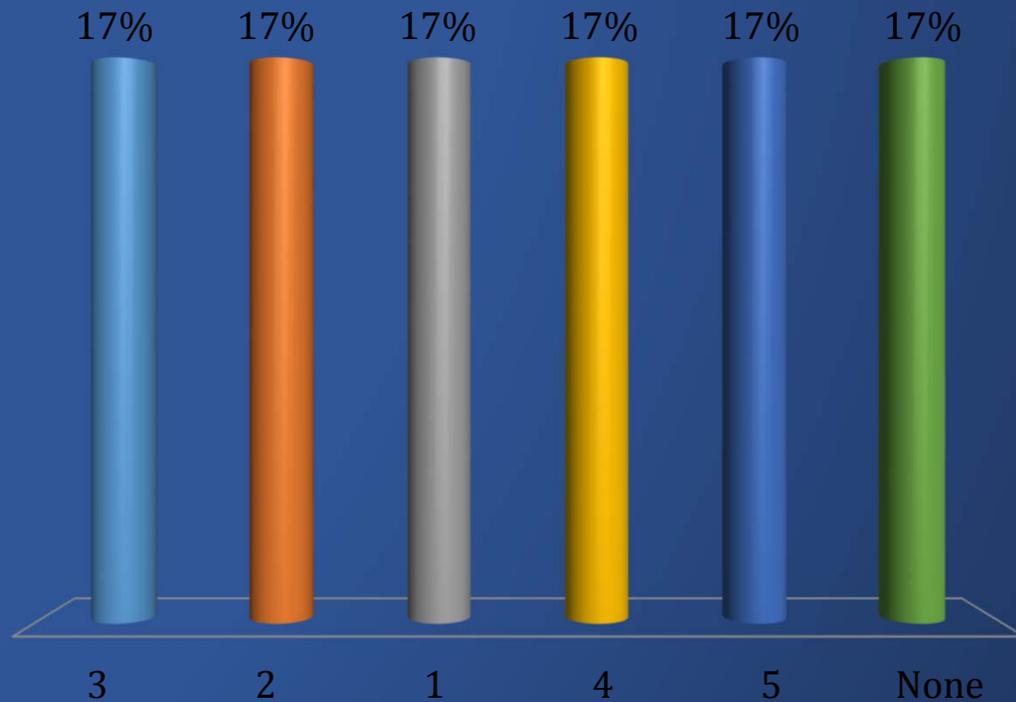
Are these sentences counted separately or as a single sentence?

- A. Separate
- B. Single
- C. They do not score at all, as they are too old



How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. 4
- E. 5
- F. None





Revocations of Supervision

§4A1.2(k)



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General Approach in Handling Revocations:

- Add time imposed at original sentencing with time imposed upon revocation
- Revocation may affect the time period under which some sentences are counted

=



General Approach in Handling Revocations:

- Original sentence 3 yrs. imprisonment, suspended upon service of 1 yr. w/ 5 yrs. probation to follow
- Probation revoked; 6 mos. imposed

1 yr. original sentence

+ 6 mos. revocation sentence

1 yr. 6 mos. = **3 points**

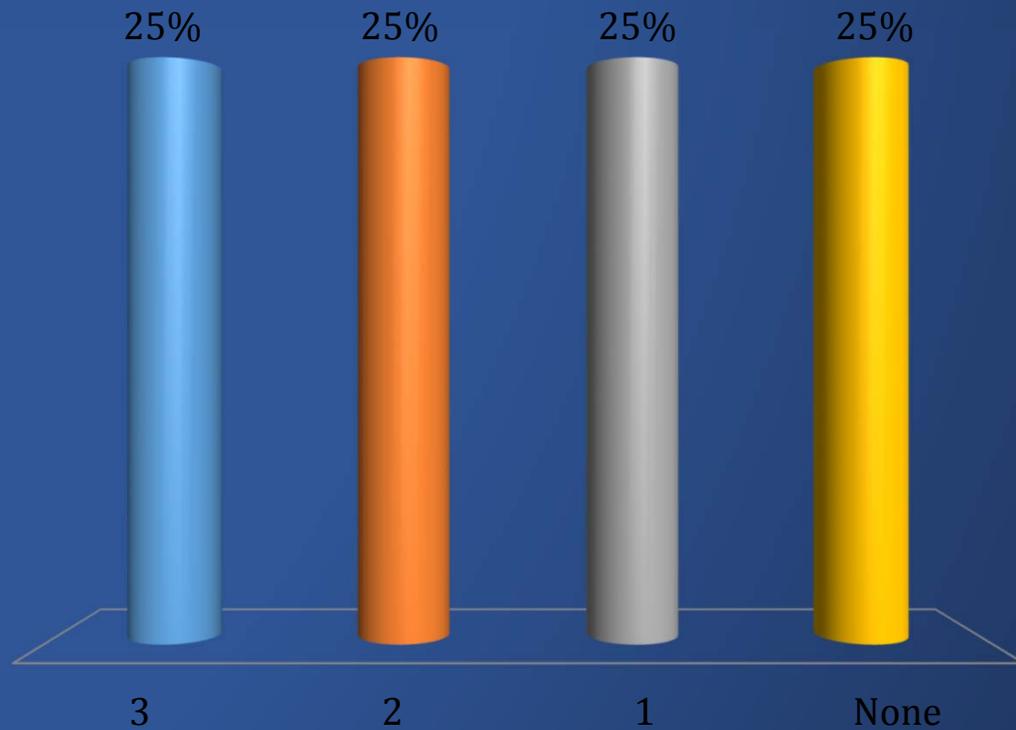


Criminal History Exercise #8

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
12/05/11 (Age 21)	Consp. to commit possession of CDS (Cocaine) Second Judicial District Court Albuquerque, New Mexico	11/07/11: Guilty 2 years deferred adjudication, probation with drug treatment 09/06/12: probation revoked; guilty and resentenced to 180 days custody

How many criminal history points?

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



Criminal History Exercise #9

Arrest Date

**03/05/04
(Age 22)**

Charge/Docket #

**21 U.S.C. § 952 and 960,
Importation of
Marijuana (felony)
USBP (Calexico, CA)
U.S. District Court
(SD/CA)**

Date/ Sent. Imposed

**06/28/04: 4 months
BOP, 2 years SR**

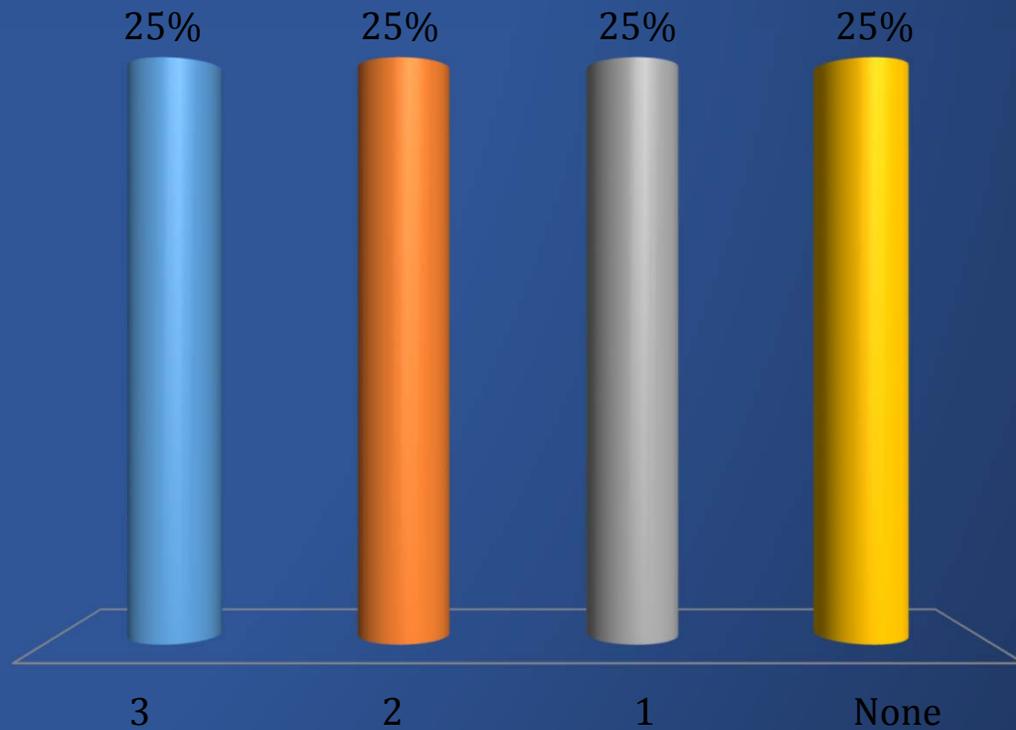
**11/10/04: SR violation,
warrant issued**

**05/29/05: SR revoked, 4
months BOP, 2 years SR
reimposed**



How many criminal history points?

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



Criminal History Exercise #10

Arrest Date

**01/10/04
(Age 21)**

Charge/Docket #

**Unlawful Sale,
Manufacture or Delivery
of a Controlled
Substance Within 1000
feet of a place of worship
Volusia Co. Cir. Ct.
Deland, FL**

Date/Sent. Imposed

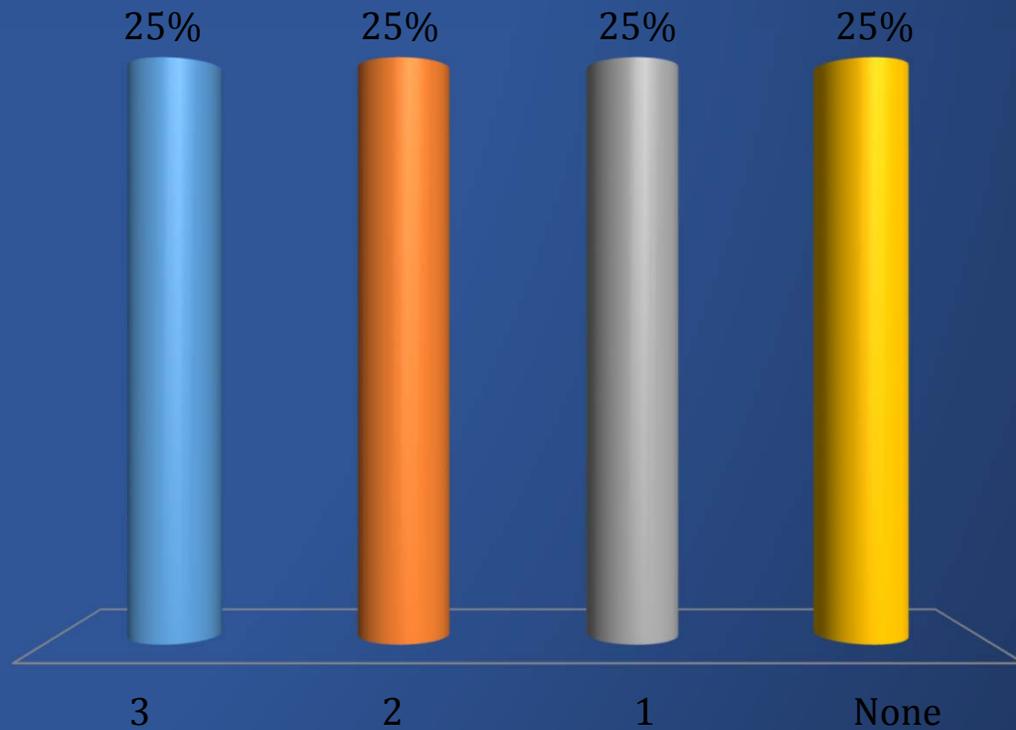
**06/09/04: 24 months
imprisonment
suspended, 3 years
probation**

**05/17/05: Probation
revoked, sentenced to FL
DOC for 24 months**



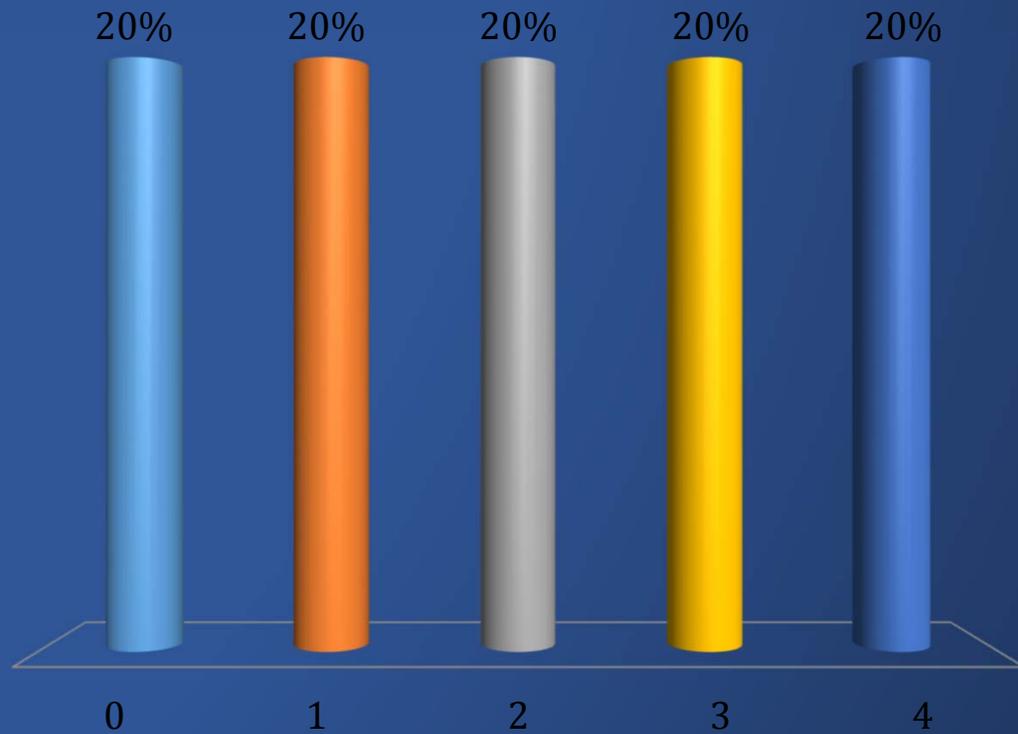
How many criminal history points?

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



Scenario 11: How many criminal history points?

- A. 0
- B. 1
- C. 2
- D. 3
- E. 4



Revocation May Affect Time Frame

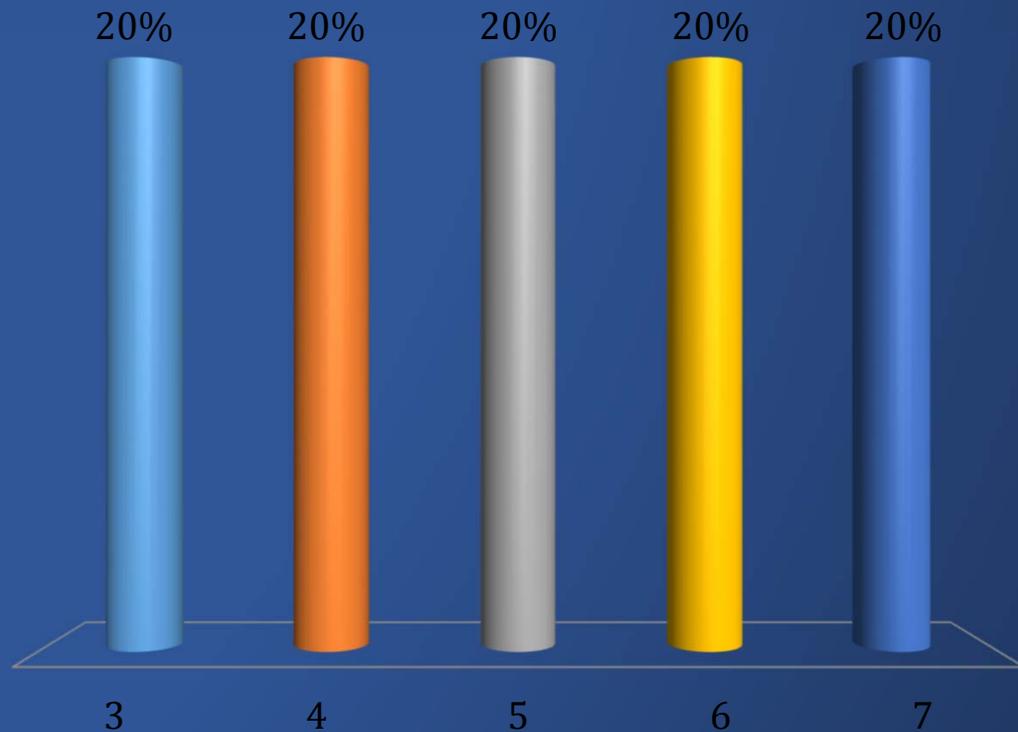
§4A1.2(k)(2)

- For the purposes of determining the applicable time period, use the following:
 - A. An ADULT TERM of imprisonment totaling MORE THAN 13 MONTHS – the date of last release from incarceration
 - B. A CONFINEMENT SENTENCE for an offense COMMITTED PRIOR TO THE DEFENDANT'S 18TH BIRTHDAY – the date of last release from confinement
 - C. IN ANY OTHER CASE – the date of the original sentence



Scenario #12: How many criminal history points?

- A. 3
- B. 4
- C. 5
- D. 6
- E. 7



§4A1.2, Application Note 11

Where a revocation applies to multiple sentences, and such sentences are counted separately, add the term of imprisonment imposed upon revocation to the sentence that will result in the greatest increase in criminal history points.





“Overrides”

Chapter Four, Part B (Also §3A1.4 - Terrorism)



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Chapter Three and Chapter Four “Overrides”

§3A1.4	Terrorism
<u>§§4B1.1 - 4B1.2</u>	<u>Career Offender</u>
§4B1.3	Criminal Livelihood
<u>§4B1.4</u>	Armed Career Criminal
§4B1.5	Repeat and Dangerous Sex Offender Against Minors



Career Offender Defendant

- Defendant charged in federal court with PWID Marijuana (at least 1,000 kg- mandatory 10-life)
- Defendant has two prior convictions: PWID Heroin and PWID Cocaine at the state level (within the relevant time frames and counted separately- 2pts each)
- OL 29 (BOL 30 +2 (gun)-3 for acceptance) and CHC III
 - (108-135 months)
- Application of Career Offender guideline will override
 - OL 37* (based on stat max of life for instant offense) and CHC VI
 - (262-327 months)

* Decrease for Acceptance again



Let's take a look back at the defendant from Criminal History Exercise #7

Arrest Date:

**05/06/09
(Age 20)**

Charge/Docket #

**Aggravated Robbery;
Rutherford County
Criminal Court,
Murfreesboro, TN**

Date/Sent. Imposed

**06/26/09: 2 years
custody, concurrent with
all other convictions**

**05/06/09
(Age 20)**

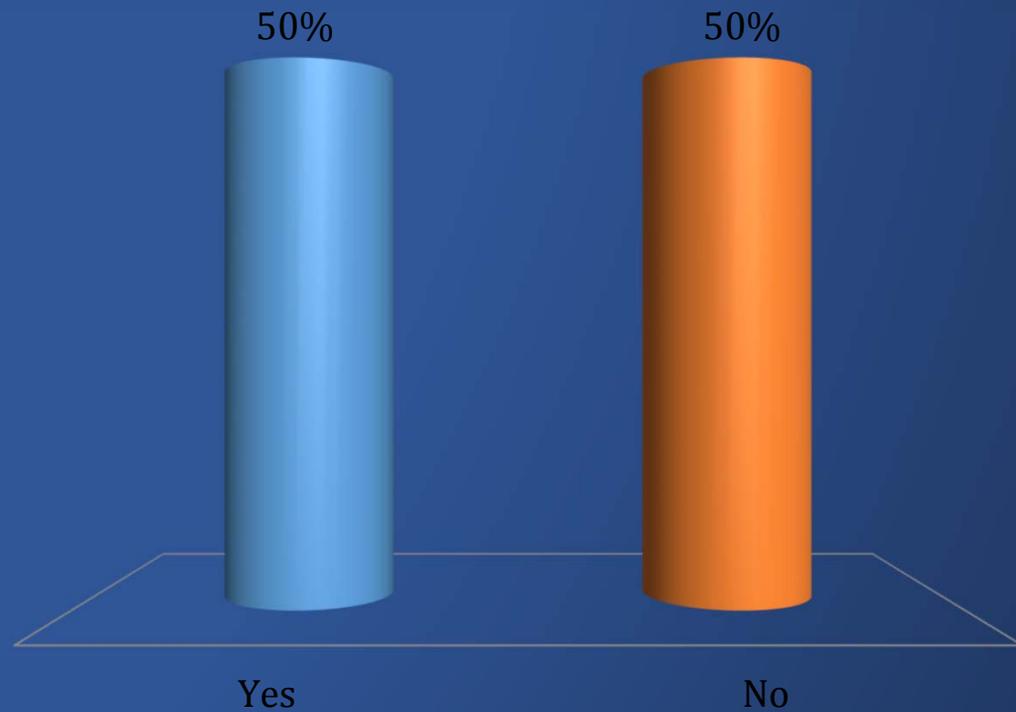
**Aggravated Robbery;
Rutherford County
Criminal Court,
Murfreesboro, TN**

**06/26/09: 1 year
custody, concurrent with
all other convictions**



Can the second robbery be used as a predicate for Career Offender?

- A. Yes
- B. No





Career Offender and 18 U.S.C. § 924(c)

§4B1.1(c)



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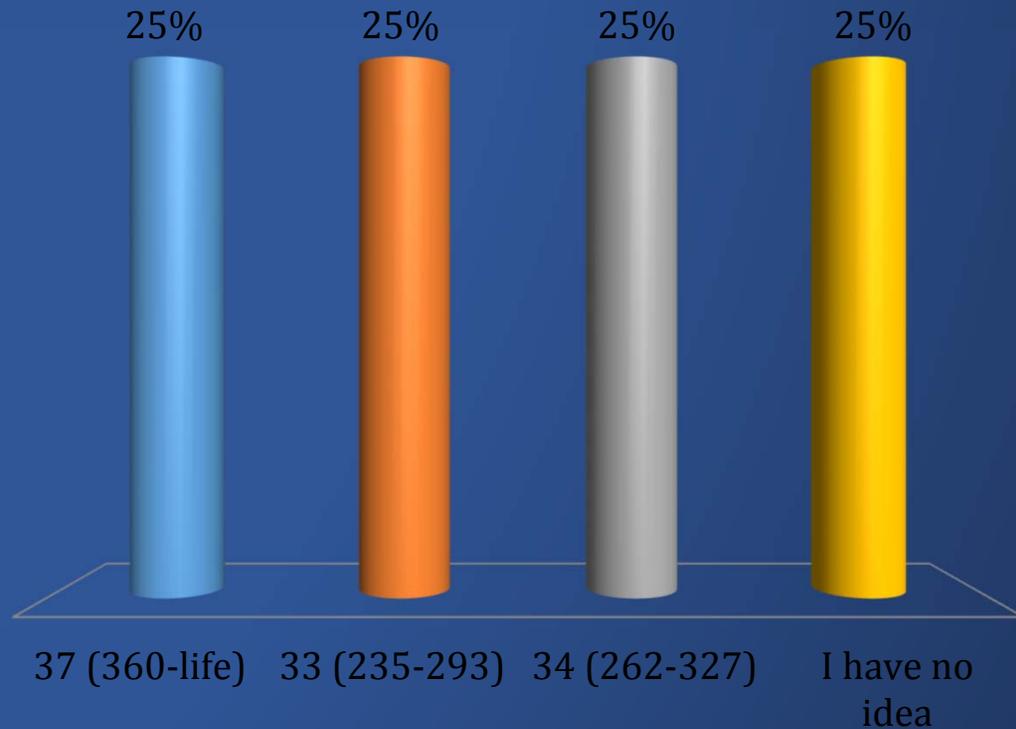
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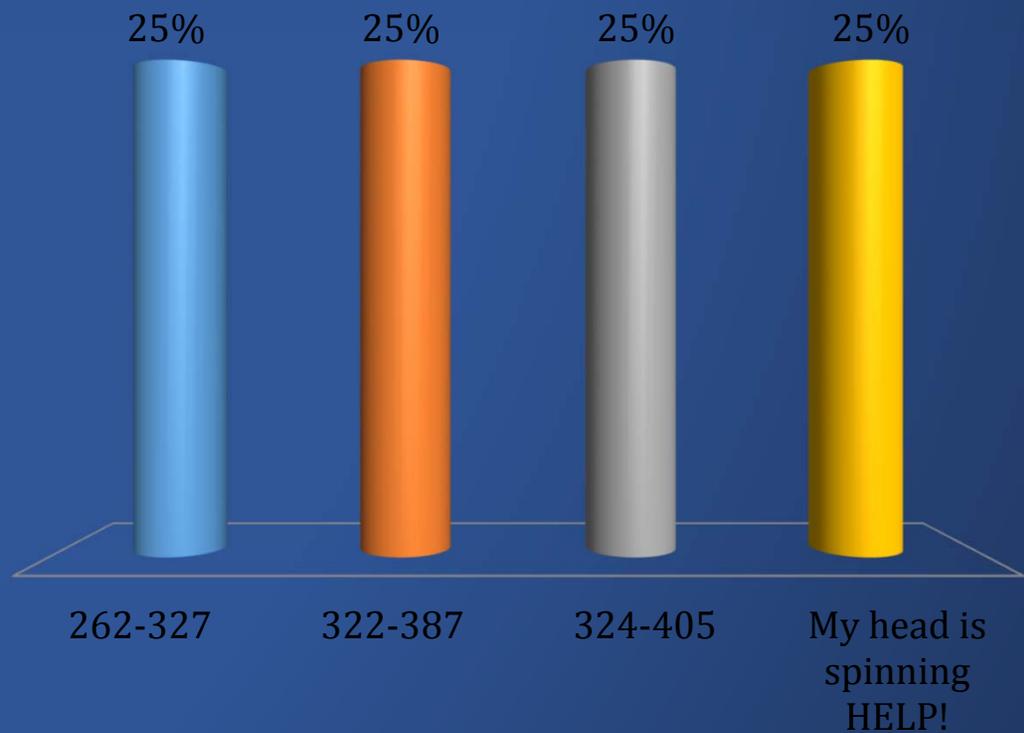
What is the defendant's final offense level and corresponding "otherwise applicable guideline range"?

- A. 37 (360-life)
- B. 33 (235-293)
- C. 34 (262-327)
- D. I have no idea



What is the resulting guideline range?

- A. 262-327
- B. 322-387
- C. 324-405
- D. My head is spinning HELP!



What is the defendant's guideline range pursuant to §4B1.1?

- A. 235-293
- B. 360-life
- C. 324-405
- D. 322-387

