



Basic Criminal History

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APP – no ans.

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Basic Criminal History Objectives

- A review of the basic rules for establishing the applicable Criminal History Category
 - **Criminal history points for prior sentences**
 - Sentence length and time frames
 - Sentences excluded from counting
 - **Criminal history points for “status”**

Basic Criminal History Objectives

- **Not included in Basic Criminal History, but addressed in Advanced Criminal History**
 - **Single-Separate determination, including the assignment of crime of violence criminal history points**
 - **Revocations of supervision**
 - **“Overrides” in Criminal History, e.g., Career Offender**



Criminal History

Chapter Four



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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



The Criminal History Guidelines

- The Criminal History Category (CHC) measures two things:
 - The seriousness of a defendant's prior record
 - The likelihood of recidivism



Criminal History Points – §4A1.1(a)–(e)

- ✓ **“Prior Sentences”**
(1, 2, or 3 points *each*)
- ✓ **“Status”**
(2 points)
- ✓ **“Crime of Violence” Increase**
for Certain Prior Sentences
(1 point, with a max total of 3)



Numerous “Rules” in Chapter Four

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



Establishing Criminal History Points for a Prior Sentence



Criminal History Points

Prior Offense Committed at 18 or Older

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



Considerations in Determining If a Previous Sentence Is Counted

1. Is it part of relevant conduct?
2. What is the length of the prior sentence?
3. Is it within the applicable time frame?
4. Excluded misdemeanor and petty offense sentences
5. Expungements, foreign and tribal sentences



Is the Previous Sentence for Conduct Part of Relevant Conduct?



“Prior Sentence”

§4A1.2(a)(1) & App. Note 1

- “Prior sentence” is a sentence imposed prior to sentencing on the instant offense, other than a sentence for conduct that is part of the relevant conduct of the instant offense



“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



Criminal History or Relevant Conduct?

- Guideline application is sequential (*See* §1B1.1)
 - Note that a specific guideline may direct that its application involves some alteration to the sequence
- Therefore Relevant Conduct (§1B1.3 – Chapter One) is established prior to Criminal History (Ch. Four)
- If something is determined to be Relevant Conduct it will not be Criminal History, unless a specific guideline directs an exception



Exceptions: Some Chapter Two guidelines specifically consider certain prior convictions, and also direct their use in Criminal History, *e.g.*:

§2K2.1 (Felon in Possession), App. Note 10

- Increased Base Offense Levels (BOLs) for prior convictions for crimes of violence and controlled substances

§2L1.2 (Illegal Reentry), App. Note 3

- Specific Offense Characteristic (SOC) increases are applicable for certain prior convictions



Exercise 1 – Relevant Conduct or Criminal History?

- Defendant's instant federal offense of conviction is a bank robbery that occurred on November 13, 2016, which is also established as the earliest date of relevant conduct
- In the immediate flight from the robbery, Defendant stole a car to make his getaway
- Defendant's prior record includes the following:



Exercise 1 – Relevant Conduct or Criminal History?

Offense Date

11/13/16

(Age 23)

Arrest Date

11/13/16

Conviction & Court

Auto Theft

State Circuit Court

Date/Sent. Imposed

2/25/17:

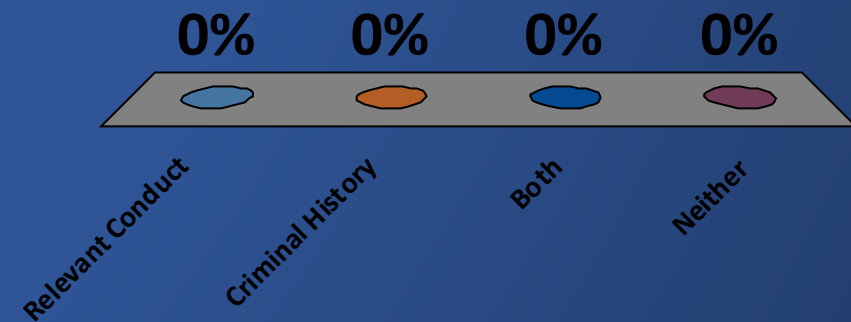
2 years'

imprisonment

This offense was committed by the defendant during his immediate flight from the bank robbery that is the basis for the instant federal offense of conviction

Is the auto theft relevant conduct, criminal history, or both, or neither?

- A. Relevant Conduct
- B. Criminal History
- C. Both
- D. Neither



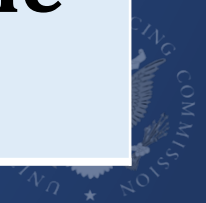
Exercise 2 – Relevant Conduct or Criminal History?

- Defendant's instant federal offense of conviction is distribution of cocaine on November 13, 2016
- It is established that Defendant's relevant conduct includes a course of conduct including all his cocaine distributions dating back to August 1, 2016
- Defendant's prior record includes the following:



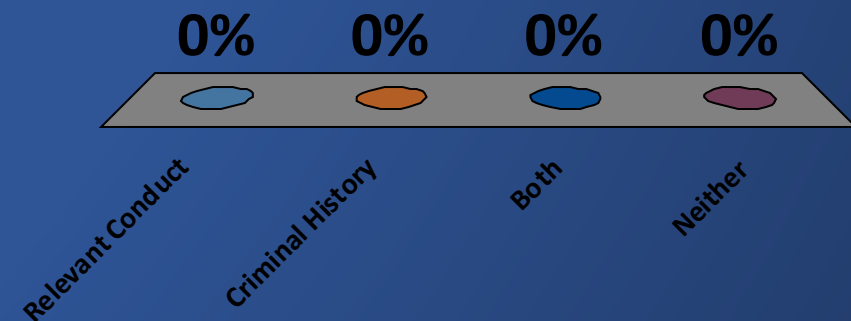
Exercise 2 – Relevant Conduct or Criminal History?

<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
9/13/16 (Age 28)	Sale of Cocaine State Court	1/10/17: 3 years' imprisonment
<u>Arrest Date</u> 12/1/16	<p>This offense conduct has been determined to be an act by the defendant in the same course of conduct of the defendant's instant federal offense of conviction for sale of cocaine</p>	



Is the state cocaine sale
relevant conduct, criminal
history, or both, or neither?

- A. Relevant Conduct
- B. Criminal History
- C. Both
- D. Neither



Exercise 3 – Relevant Conduct or Criminal History?

- Defendant's instant federal offense of conviction is felon in possession of a firearm
- In the application of §2K2.1 (Felon in Possession), Defendant is being given the increased base offense level (BOL 20 instead of BOL 14) based on the following prior felony conviction that Defendant sustained for a controlled substance offense:

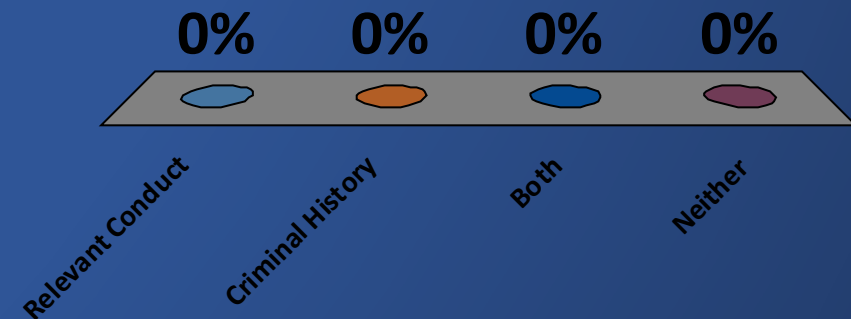


Exercise 3 – Relevant Conduct or Criminal History?

Offense Date**1/15/12****(Age 34)****Arrest Date****4/20/12****Conviction & Court****Drug Distribution****State District Court****Date/Sent. Imposed****11/15/12:****36 months' custody**

Is the state drug distribution relevant conduct, criminal history, or both, or neither?

- A. Relevant Conduct
- B. Criminal History
- C. Both
- D. Neither



What Is the Length of the Prior Sentence?



Length of a Prior Sentence of Imprisonment

§4A1.2(a) and App. Note 2

- Set by **maximum sentence imposed**, **not time served**
 - If the 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”

Note: “*Sentence of imprisonment*” means a sentence of incarceration



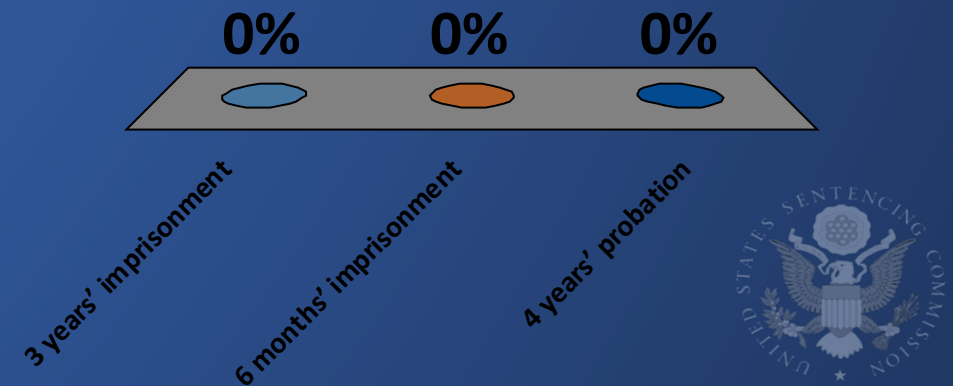
Exercise 4 – Length of Prior

- Sentence of 3 years' imprisonment, suspended to 6 months' imprisonment & 4 years' probation to follow



What is the maximum sentence imposed?

- A. 3 years' imprisonment
- B. 6 months' imprisonment
- C. 4 years' probation



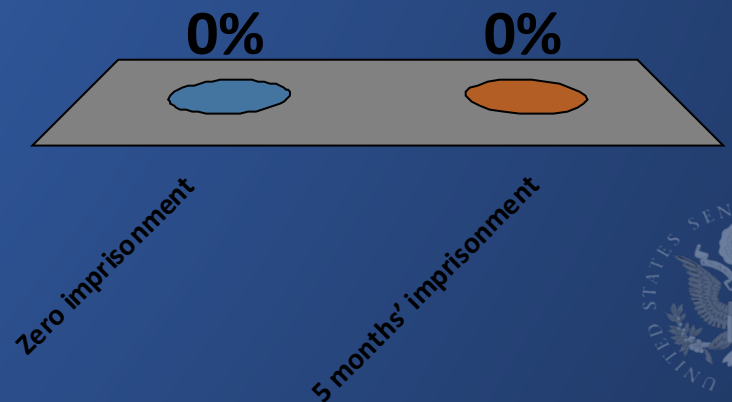
Exercise 5 – Length of Prior

- Sentence of “time served”
 - At the time of sentencing the defendant had been in pretrial custody for 5 months



What is the maximum sentence imposed?

- A. Zero imprisonment
- B. 5 months' imprisonment



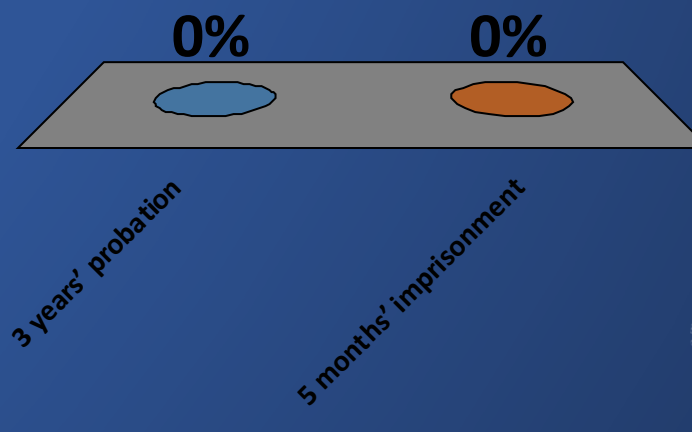
Exercise 6 – Length of Prior

- Sentence of 3 years' probation
 - At the time of sentencing the defendant had been in pretrial custody for 5 months



What is the maximum sentence imposed?

- A. 3 years' probation
- B. 5 months' imprisonment



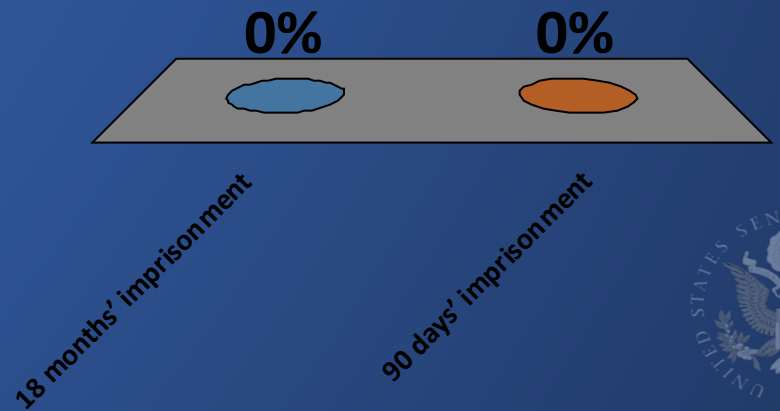
Exercise 7 – Length of Prior

- Sentence of 18 months' imprisonment
 - This sentence was subsequently reduced by the judge to 90 days' imprisonment



What is the maximum sentence imposed?

- A. 18 months' imprisonment
- B. 90 days' imprisonment



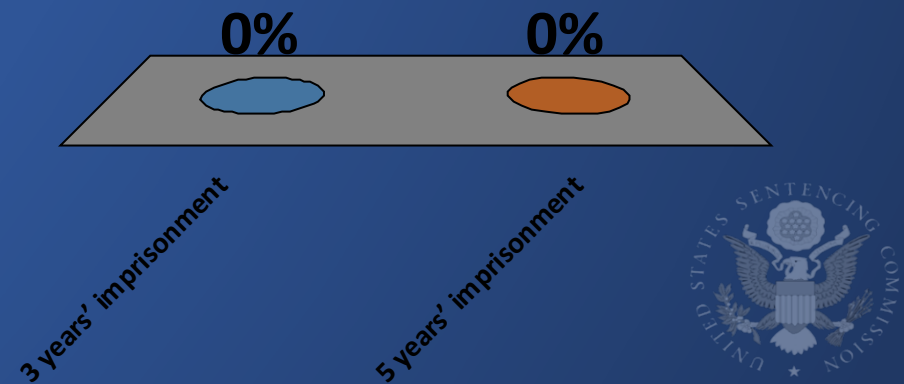
Exercise 8 – Length of Prior

- Sentence of 3 to 5 years' imprisonment



What is the maximum sentence imposed?

- A. 3 years' imprisonment
- B. 5 years' imprisonment



Is the Prior Sentence Within the Applicable Time Frame?

See §1B1.1, App. Note 1(H) and §4A1.2(a)(1), (d), (e) & App. Note 1



Criminal History Points

Prior Offense Committed at 18 or Older

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

* If otherwise countable

** Exceptions may apply



Criminal History Points

Prior Offense Committed Before 18

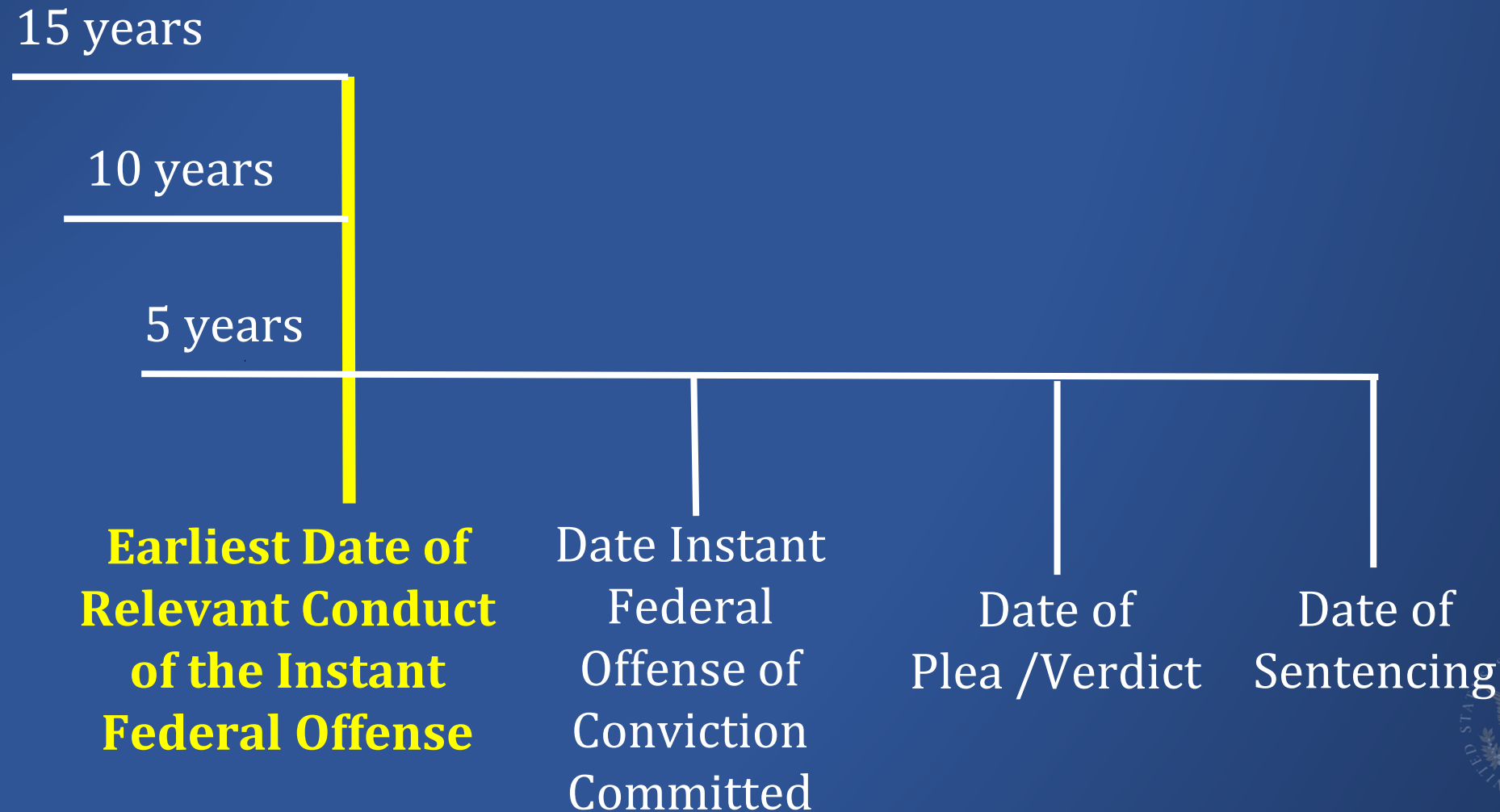
Points*	Sentence	Time Frame (Earliest Date of Relevant Conduct)
3	Only if convicted as an adult and >13 months	Within 15 yrs. of prior sentence imposition or release
2	≥ 60 days	Within 5 yrs. of prior sentence imposition or release
1 (max of 4)	All others**	Within 5 yrs. of prior sentence imposition

* If otherwise countable

** Exceptions may apply



The Interplay Between Criminal History Time Frames and Relevant Conduct



Exercise 9 – Applicable Time Frame

- Defendant's instant federal offense of conviction, theft from an interstate shipment, occurred on November 1, 2016
- Defendant's earliest date of relevant conduct is January 11, 2015
- Defendant's prior record includes the following:



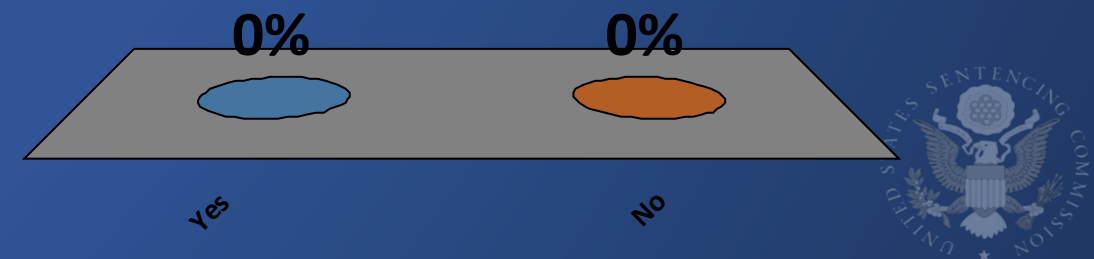
Exercise 9 – Applicable Time Frame

<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
7/4/05 (Age 23)	Assault State Criminal Court	9/1/05: 90 days' jail
<u>Arrest Date</u> 7/4/05		

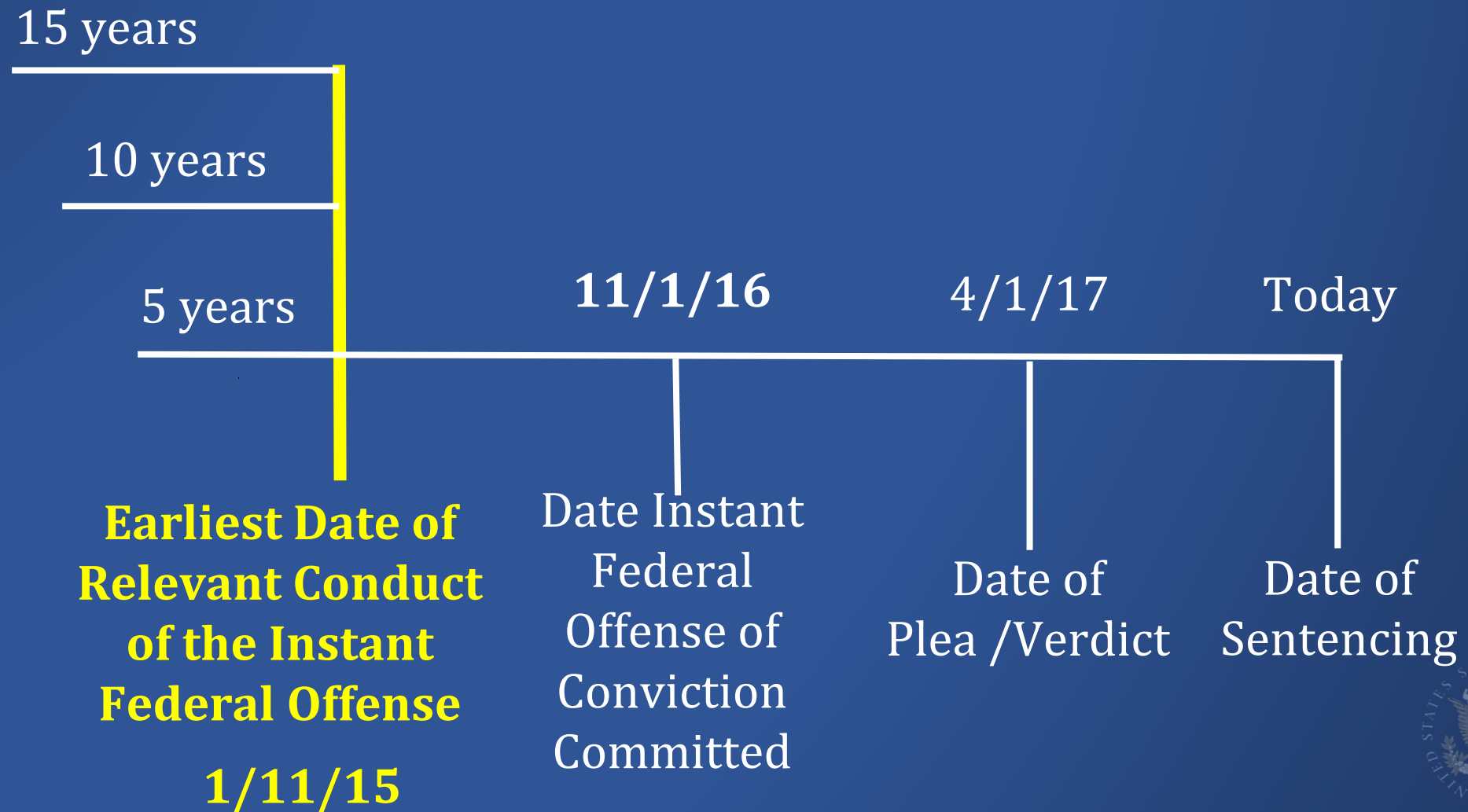
Does this prior fall within
the applicable time
frame?

A. Yes

B. No



The Interplay Between Criminal History Time Frames and Relevant Conduct



Exercise 10 – Applicable Time Frame

- Defendant's instant federal offense of conviction is a bank robbery that occurred on March 1, 2017, which is also established as the earliest date of relevant conduct
- Defendant's prior record includes the following:



Exercise 10 – Applicable Time Frame

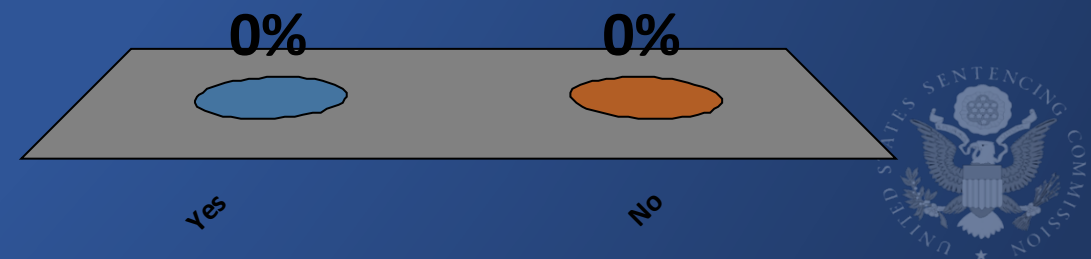
<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
11/25/00 (Age 22)	Burglary State Criminal Court	2/20/01: 5 years' imprisonment
<u>Arrest Date</u> 12/20/00		4/20/03: Paroled



Does this prior fall within
the applicable time
frame?

A. Yes

B. No



Exercise 11 – Applicable Time Frame

- Defendant's instant federal conviction is for a drug sale on January 1, 2016
- It is established that defendant's earliest date of relevant conduct was a drug sale in the same course of conduct on January 1, 2010
- Defendant's prior record includes the following:



Exercise 11 – Applicable Time Frame

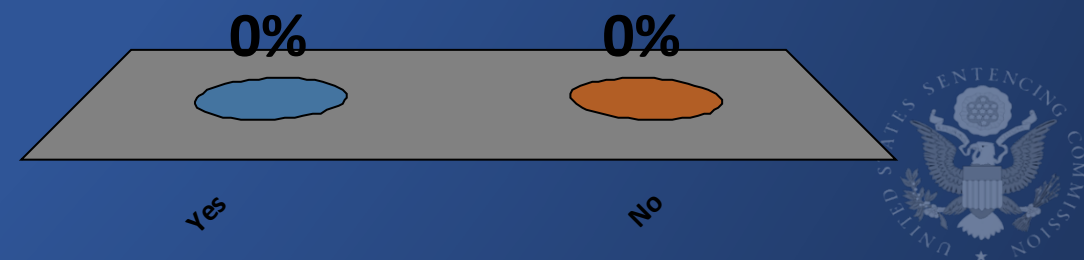
<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
7/13/93 (Age 23)	Aggravated Assault State District Court	1/25/94: 6 years' custody department of corrections
<u>Arrest Date</u> 7/13/93		7/24/96: Paroled



Does this prior fall within
the applicable time
frame?

A. Yes

B. No



Exercise 12 – Applicable Time Frame

- Defendant's instant federal offense of conviction, Interstate Transportation of a Stolen Motor Vehicle, occurred on December 1, 2015
- Defendant's earliest date of relevant conduct is June 1, 2015
- Defendant's prior record includes the following:



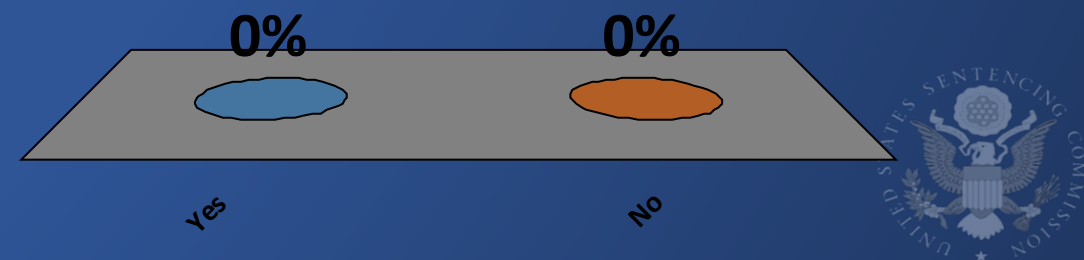
Exercise 12 – Applicable Time Frame

<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
4/4/16 (Age 32)	Misdemeanor Domestic Violence County Court	7/1/16: \$500 fine and domestic violence program
<u>Arrest Date</u> 4/4/16		

Does this prior fall within
the applicable time
frame?

A. Yes

B. No



Exercise 13 – Applicable Time Frame

- Defendant's instant federal conviction is a fraud conspiracy from January 1, 2010 to December 31, 2015
- Defendant joined the conspiracy July 1, 2014, which is also established as the defendant's earliest date of relevant conduct
- Defendant's prior record includes the following:



Exercise 13 – Applicable Time Frame

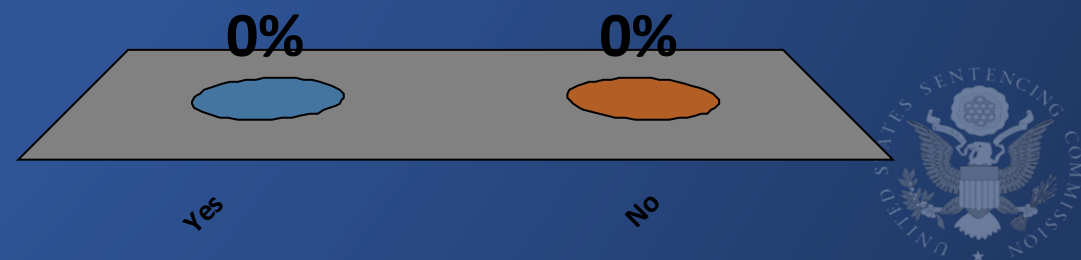
<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
1/13/02 (Age 26) <u>Arrest Date</u> 3/15/02	Receipt of Stolen Interstate Shipment U.S. District Court	2/2/03: 3 years' probation 2/1/06: Probation expired



Does this prior fall within
the applicable time
frame?

A. Yes

B. No



Reminders Regarding the Earliest Date of Relevant Conduct

- The earliest date of a defendant's relevant conduct may be considerably earlier than the date of the offense of conviction, *e.g.*, conduct determined to be in the same course of conduct or common scheme or plan



Reminders Regarding the Earliest Date of Relevant Conduct (cont.)

- In a conviction for a conspiracy count, the first date of the conspiracy may be considerably earlier than the date the defendant joined the conspiracy, which typically is the earliest date of a defendant's relevant conduct



Excluded Misdemeanor & Petty Offense Sentences

§4A1.2(c)(1) & (c)(2)



Excluded Misdemeanor & Petty Offense Sentences

§4A1.2(c)(1) & (c)(2) & (o)

- “Misdemeanor” means having a maximum statutory penalty of one year or less
- Note: These offenses are counted if a “felony offense,” *i.e.*, a statutory maximum of over one year
 - This is true even if the state classifies the offense as a “misdemeanor”



Excluded Misdemeanor & Petty Offense Sentences

§4A1.2(c)(1)

- §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



List of Offenses at §4A1.2(c)(1)

The list includes the following offenses, and offenses similar to the following, by whatever name they are known:

- 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



Excluded Misdemeanor & Petty Offense Sentences

§4A1.2(c)(2)

- §4A1.2(c)(2) – List of misdemeanor and petty offenses that are never counted



List of Offenses at §4A1.2(c)(2)

The list includes the following offenses, and offenses similar to the following, by whatever name they are known:

- 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



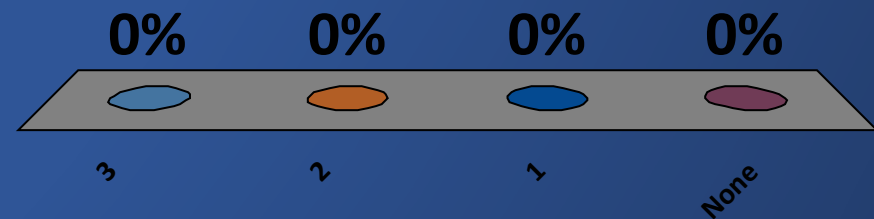
Exercise 14 – Excluded Misdemeanor & Petty Offenses

<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
8/10/12 (Age 25)	Unlicensed Driver Municipal Court	12/22/12: \$250 fine
<u>Arrest Date</u> 8/10/12		



How many criminal history points?

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



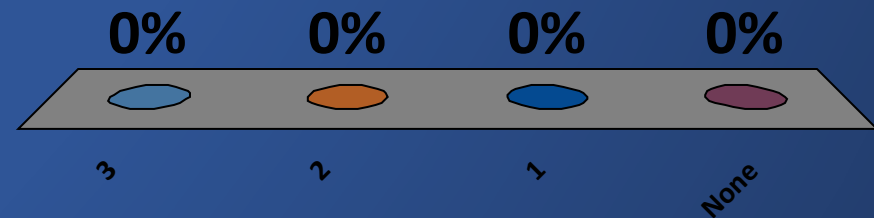
Exercise 15 – Excluded Misdemeanor & Petty Offenses

<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
11/21/13 (Age 21)	Driving While Intoxicated (misdemeanor)	07/20/14: 3 days' jail and \$500 fine
<u>Arrest Date</u> 11/21/13	County Criminal Court	



How many criminal
history points?

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



NOTE: Sentences for DWI and DUI

§4A1.2, App. Note 5

- Convictions for DWI and DUI are counted regardless as to how the offense is classified (*e.g.*, felony, misdemeanor, petty)
- The lists of excluded sentences at §4A1.2(c)(1)&(c)(2) do not apply to DWI and DUI



The Counting of Sentences from Certain Jurisdictions or with Certain Dispositions



Numerous “Rules” in §4A1.2 as to Whether Certain Other Sentences Are to Be Counted or Not

- Sentences that are not to be counted, include, *e.g.*,
 - Foreign sentences (§4A1.2(h))
 - Tribal court sentences (§4A1.2(i))
 - Expunged convictions (§4A1.2(j) & App. Note 10)



Numerous “Rules” in §4A1.2 as to Whether Certain Other Sentences Are to Be Counted or Not (cont.)

- Sentences that are to be counted, include, *e.g.*,
 - An adult diversionary disposition if it involved a judicial finding of guilt, an admission of guilt, or plea of nolo contendere in open court (§4A1.2(f) & App. Note 9)
 - A sentence resulting from a conviction that has been set aside or pardoned for reasons unrelated to innocence or errors of law (*e.g.*, to restore civil rights or to remove the stigma of a criminal conviction) (§4A1.2, App. Note 10)



“Status”



“Status”

§4A1.1(d) & App. Note 4

- 2 criminal history points are added if the defendant committed the *instant offense* while under any “*criminal justice sentence*”



“Status”

§4A1.1(d) & App. Note 4

Threshold determination for “Status”:

- The “*criminal justice sentence*” the defendant was under must be a prior sentence that is being counted under the current criminal history calculations at §4A1.1(a), (b), or (c)



“Criminal Justice Sentence”

§4A1.1(d) & App. Note 4

- Includes:
 - Probation
 - Parole
 - Supervised release
 - Imprisonment
 - Work release
 - Escape status (or failure to report for service of a sentence of imprisonment – See §4A1.2(n))



“Criminal Justice Sentence” (cont.)

§4A1.1(d) & App. Note 4

- While the criminal justice sentence must have a custodial or supervisory component, active supervision is not required
 - *e.g.*, unsupervised probation would be included



“Status” & Relevant Conduct

§4A1.1(d) & App. Note 4

- “Status” applies if the defendant was under a criminal justice sentence (*e.g.*, on state parole) at any time during the period of the defendant’s relevant conduct of the instant federal offense



Exercise 16 – “Status”

- Defendant’s instant federal offense of conviction is a bank robbery that occurred on November 13, 2016, which is also established as the earliest date of relevant conduct
- Defendant’s prior record includes the following:



Exercise 16 – “Status”

Offense Date

10/18/13

(Age 27)

Arrest Date

10/18/13

Conviction & Court

Possession with
Intent to Distribute
Heroin

State Criminal Court

Date/Sent. Imposed

2/21/14:

5 years'
imprisonment

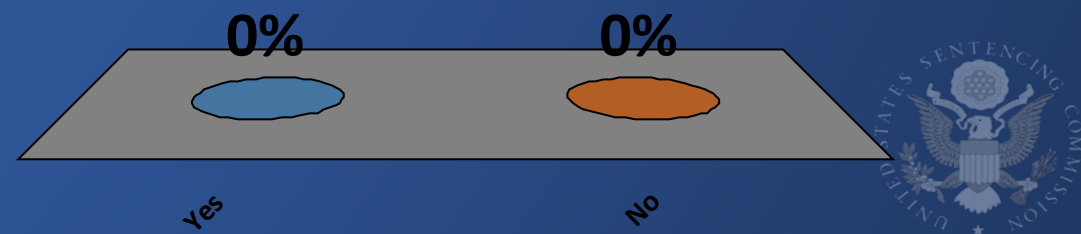
2/20/16: Paroled

Defendant was on active supervision of this state parole when he committed the instant federal offense; State parole authorities are awaiting the disposition of the instant federal case before taking action

Do criminal history
points for “status” apply?

A. Yes

B. No



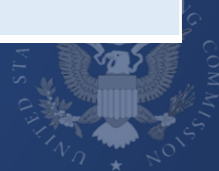
Exercise 17 – “Status”

- Defendant’s instant federal offense of conviction is a drug sale that occurred on January 1, 2016
- It is established that defendant’s earliest date of relevant conduct was a drug sale in the same course of conduct on January 1, 2010, and that the relevant conduct continued until January 1, 2016
- Defendant’s prior record includes the following:



Exercise 17 – “Status”

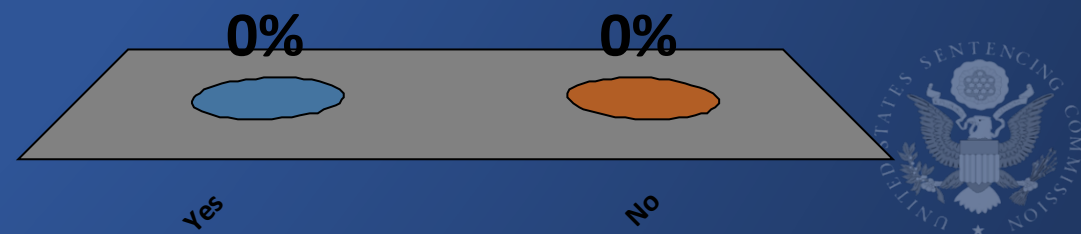
<u>Offense Date</u>	<u>Conviction & Court</u>	<u>Date/Sent. Imposed</u>
2/11/13 (Age 26)	DUI 2 nd Offense State Court	5/25/13: \$1000 fine & 6 months' probation
<u>Arrest Date</u> 2/11/13		11/24/13: Probation expired



Do criminal history points for “status” apply?

A. Yes

B. No



Thank You!

