



Guns and 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



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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

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(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

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§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

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§2K2.1 – “Felon-in-Possession”

Unlawful Receipt, Possession, or Transportation of Firearms; or Prohibited Transactions Involving Firearms



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§2K2.1(a) – Base Offense Levels (BOLs)

Eight BOLs, from 6 to 26, determined by various factors, including:

- Status, including
 - “felon-in-possession” (“basic” case is BOL 14)
 - “straw purchaser” (“basic” case is BOL 14)
- More serious types of firearms
- Prior convictions of “crime of violence” or “controlled substance offense”



Use of “Crime of Violence” and “Controlled Substance Offense” in BOLs

- Requires use of the “Categorical Approach”
- The terms are defined at the *Career Offender* guideline
 - Per §2K2.1, App. Note 1 referring to §4B1.2(a)&(b) and App. Note 1



Guns and Drugs and Relevant Conduct

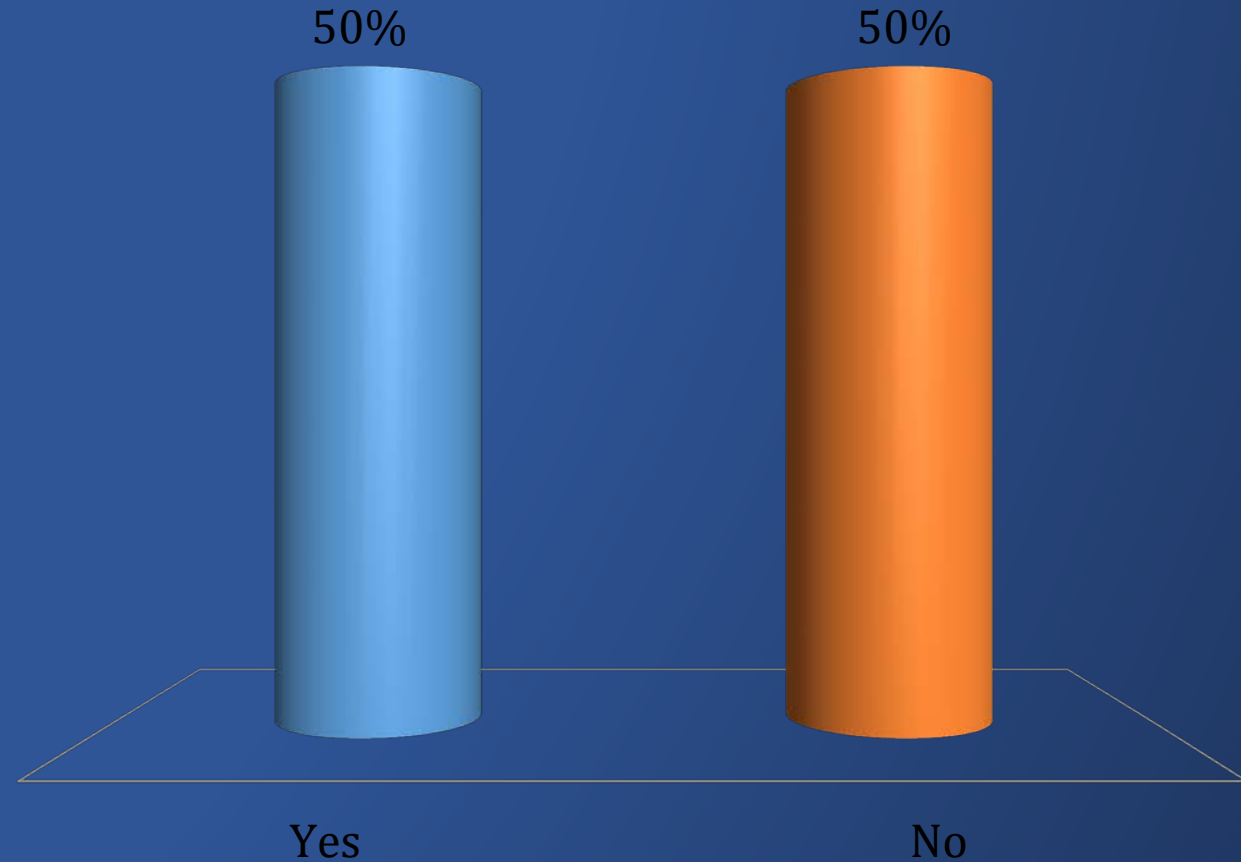
§§2D1.1, 2K2.1 & 1B1.3(a)(2)

- 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 §2K2.1 (or a similar guideline)
 - This does not require that there actually be multiple counts of conviction, however



Scenario #1: Does the SOC at §2D1.1 for possession of a dangerous weapon apply in this case?

- A. Yes
- B. No



“Firearm” SOC

§2D1.1(b)(1) & App. Note 11

“...should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense.”

Note: Under relevant conduct a defendant can be held accountable for a co-participant’s firearm



Impact of § 924(c) on SOC

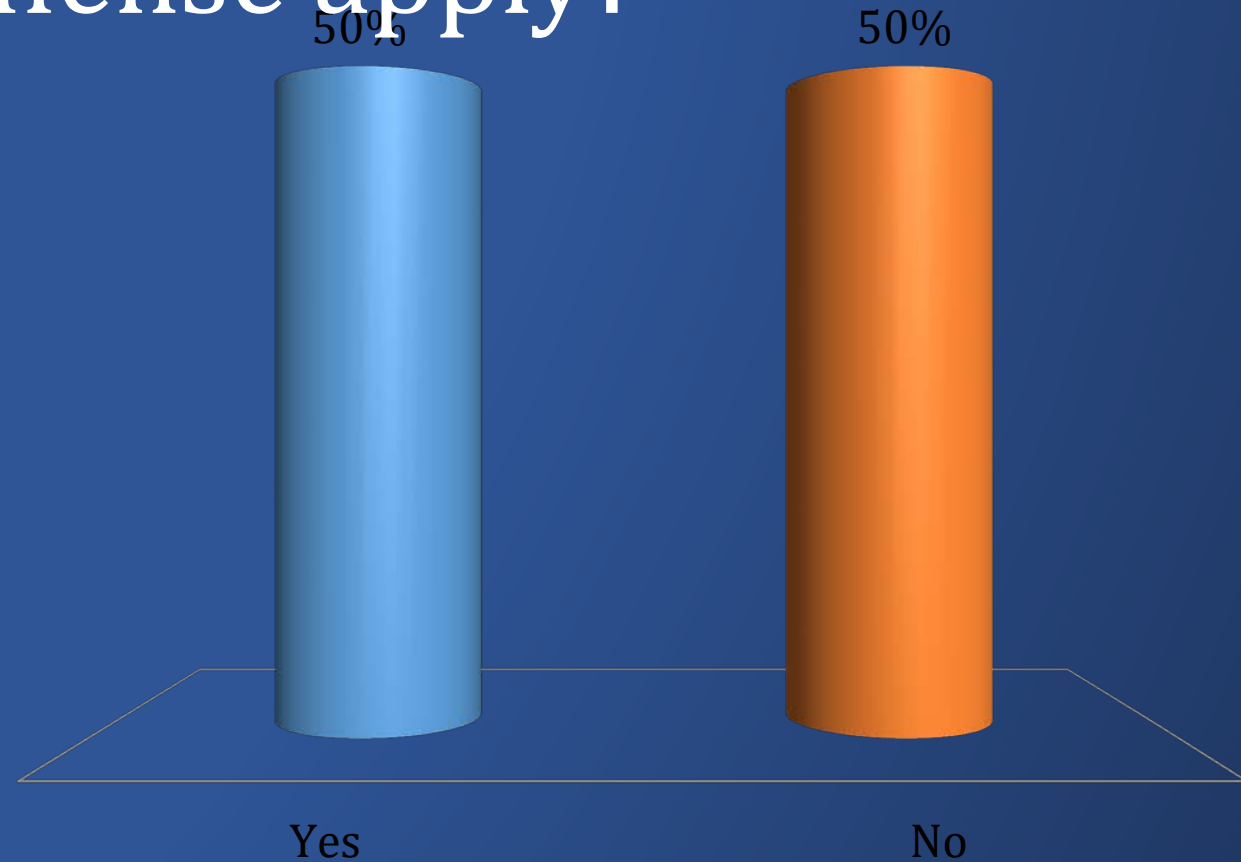
§2K2.4, App. Note 4

- **Do not apply** the firearm (weapon) SOC in guideline for the *underlying* offense
 - § 924(c) accounts for any weapon SOC for the underlying offense
 - § 924(c) accounts for any weapon within the relevant conduct



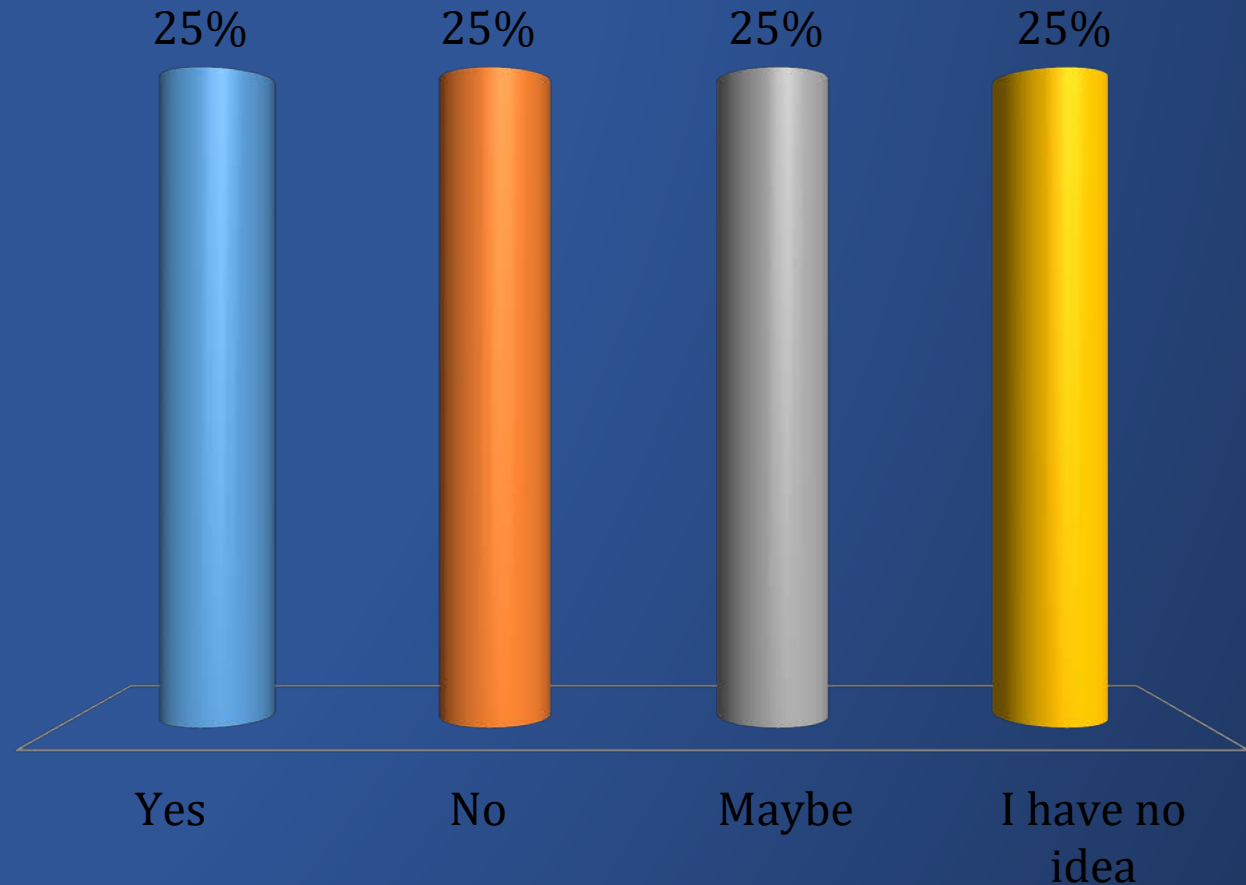
Scenario#1: Does the SOC at §2K2.1 for using/possessing a firearm in connection with another felony offense apply?

- A. Yes
- B. No



Scenario #1: Does the cross reference at §2K2.1 apply?

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



“Use/Possession” SOC

§2K2.1(b)(6)(B)

- If the defendant:
 - Used or possessed any firearm or ammunition in connection with another felony offense
- OR**
- Possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense

Increase by 4 levels, with floor of 18



“Use/Possession” Cross Reference

§2K2.1(c)(1)

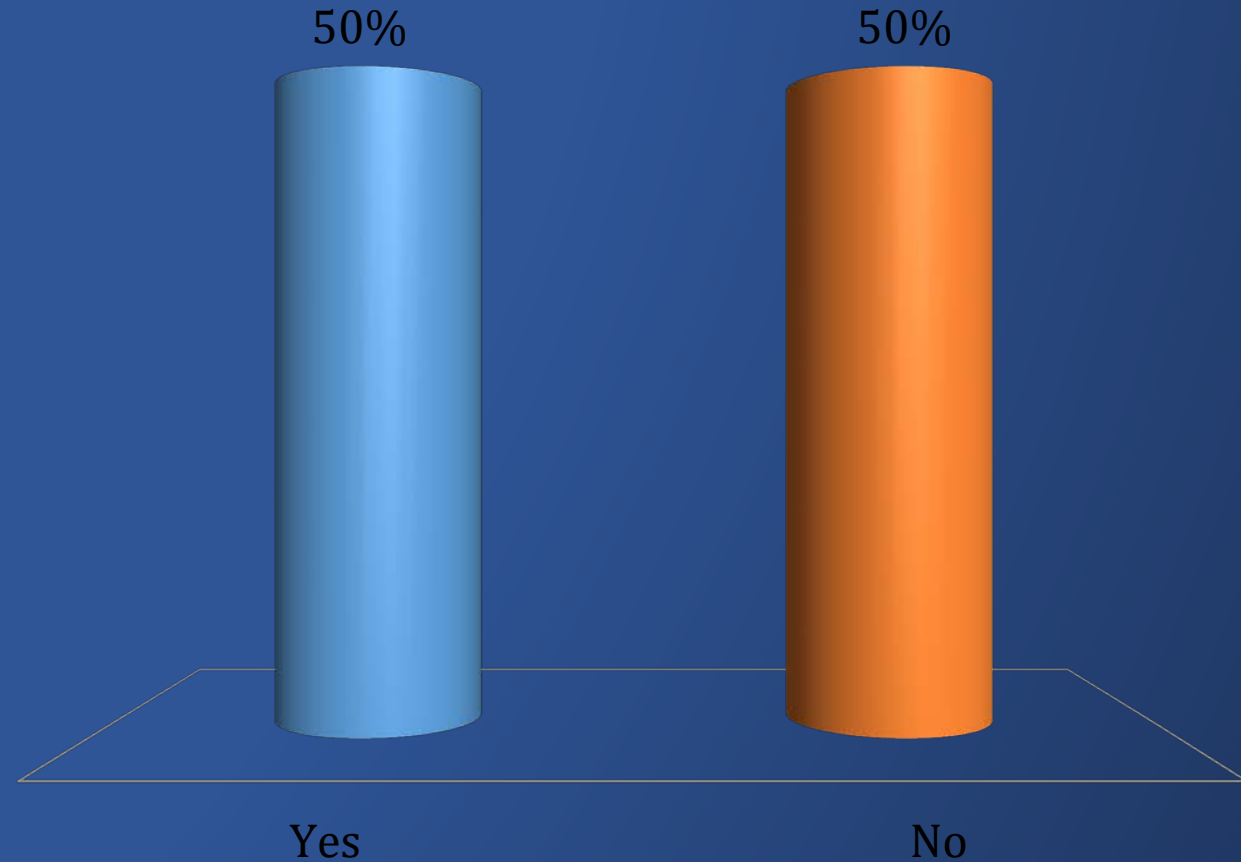
- If the defendant:
 - Used or possessed any firearm or ammunition cited in the offense of conviction in connection with commission or attempted commission of another offense
- OR**
- Possessed or transferred a firearm or ammunition cited in the offense of conviction with knowledge or intent that it would be used or possessed in connection with another felony offense

Apply the cross reference



Scenario #2: Does the SOC at §2K2.1 for trafficking of firearms apply?

- A. Yes
- B. No



Trafficking Definition

§2K2.1(b)(5), App. Note 13(A)

If the defendant:

- transported, transferred, or otherwise disposed of two or more firearms to another individual or received such firearms with the intent to do so

AND

- knew or had reason to believe such conduct would result in the transport, transfer or disposal of a firearm to an individual
 - whose possession or receipt would be “*unlawful*”; **or**
 - who intended to use or dispose of the firearm unlawfully



Trafficking Definition (cont.)

§2K2.1(b)(5), App. Note 13(B)

Individual whose possession or receipt of the firearm would be “*unlawful*” means an individual who:

- Has a prior felony conviction for a *crime of violence* or a *controlled substance offense*, or a misdemeanor domestic violence offense

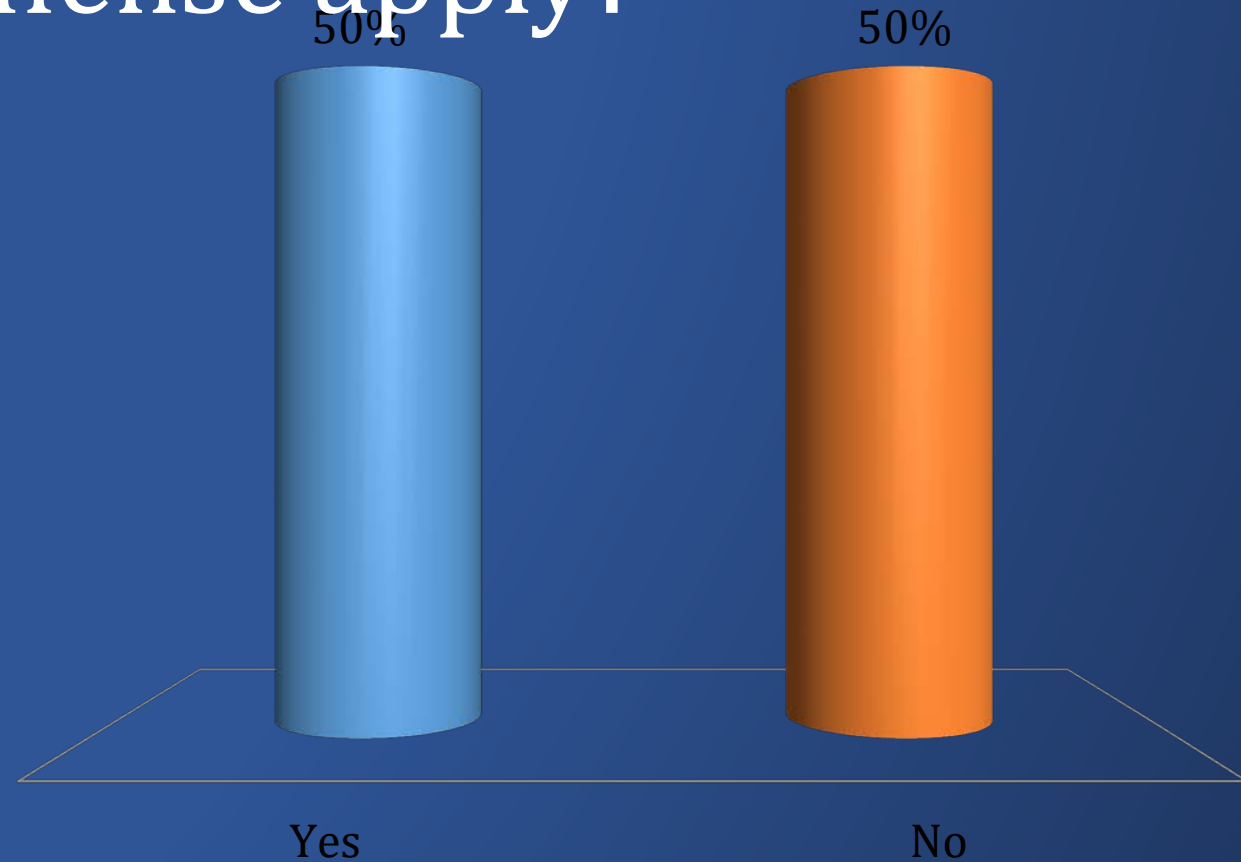
OR

- At the time of the offense was under a criminal justice sentence



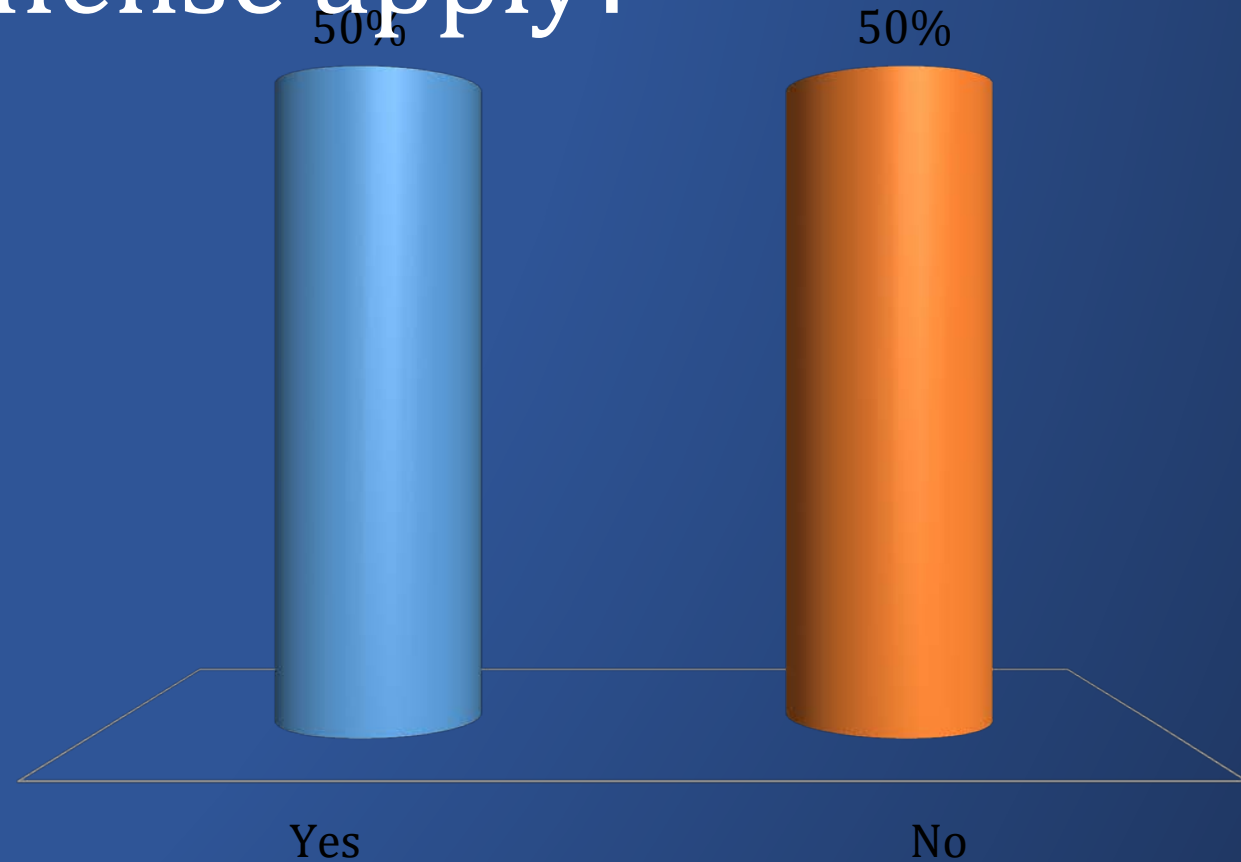
Scenario #3: Does the SOC at §2K2.1 for use/possession of a firearm in connection with another felony offense apply?

- A. Yes
- B. No



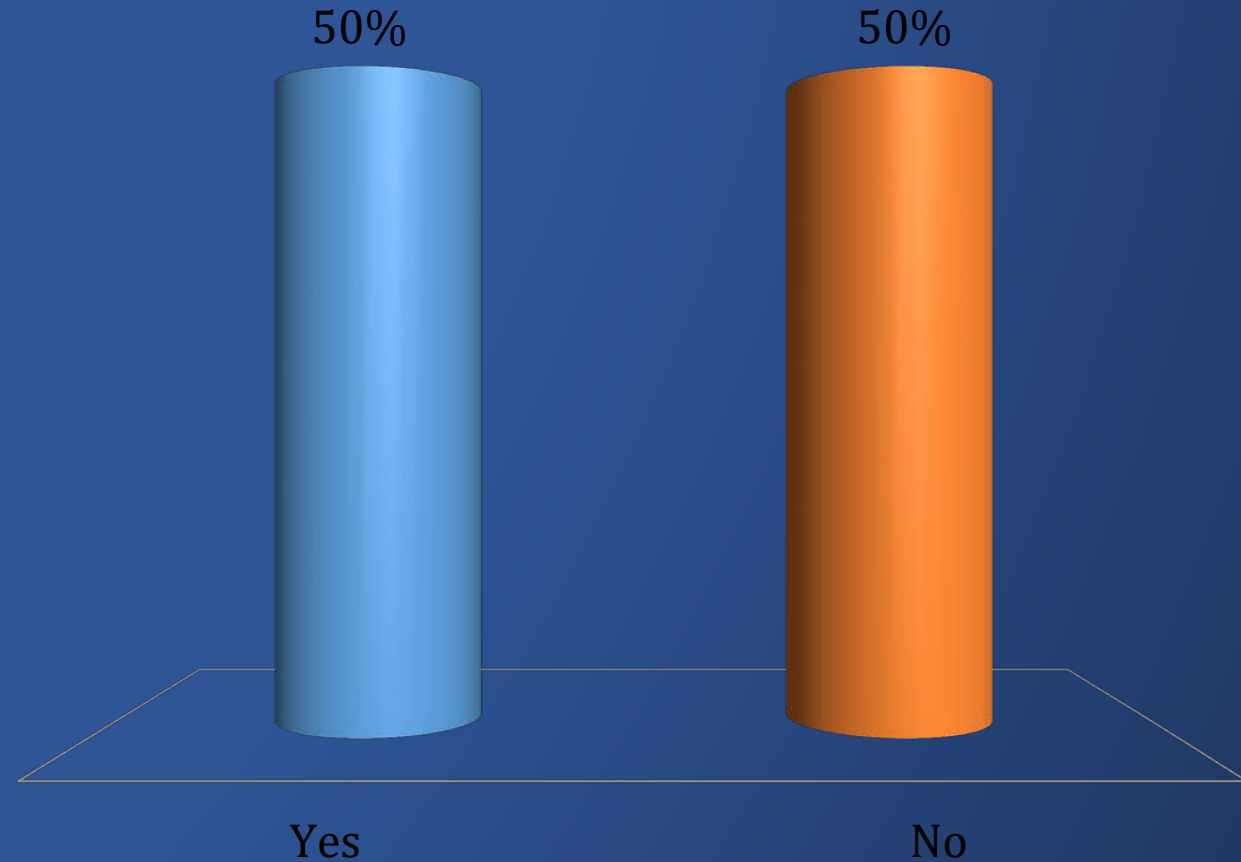
Scenario #4: Does the SOC at §2K2.1 for use/possession of a firearm in connection with another felony offense apply?

- A. Yes
- B. No



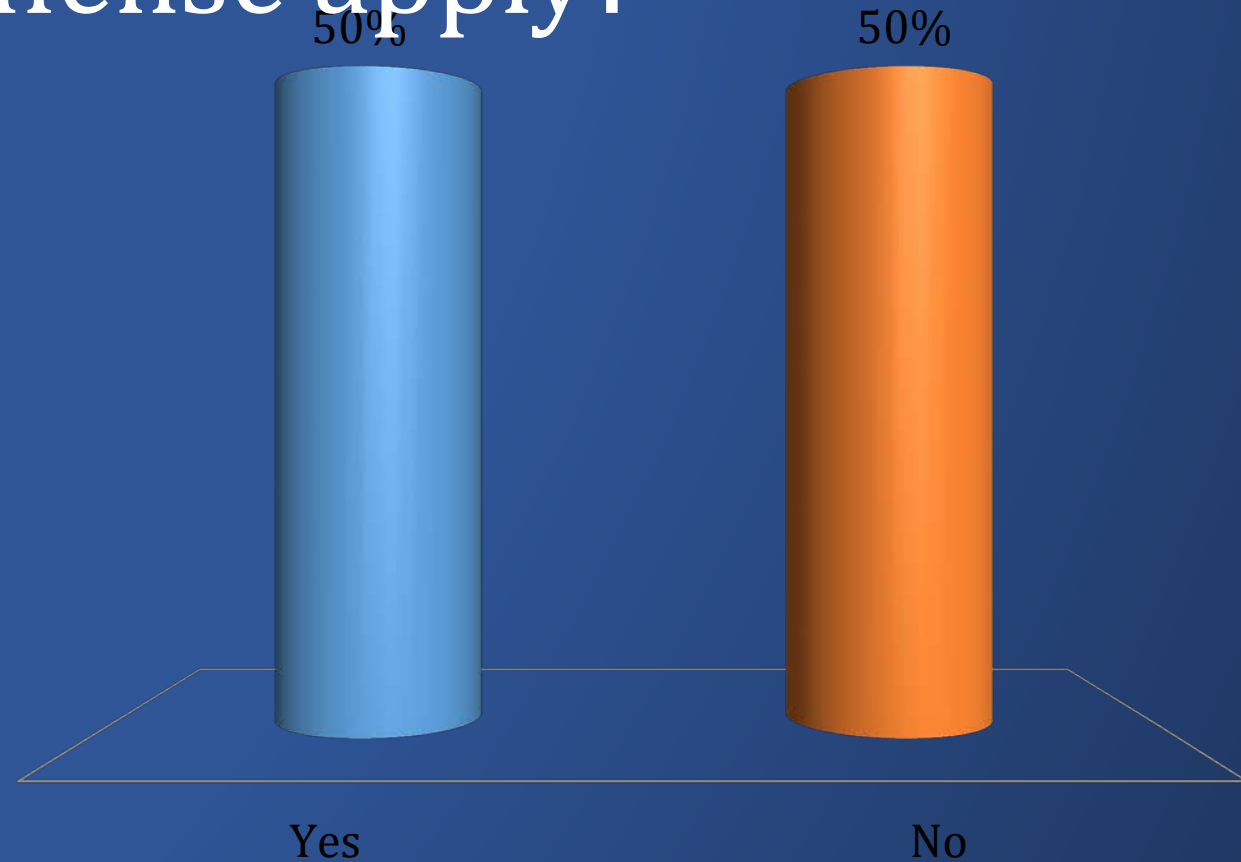
Scenario #4: Does the cross reference at §2K2.1 apply?

- A. Yes
- B. No



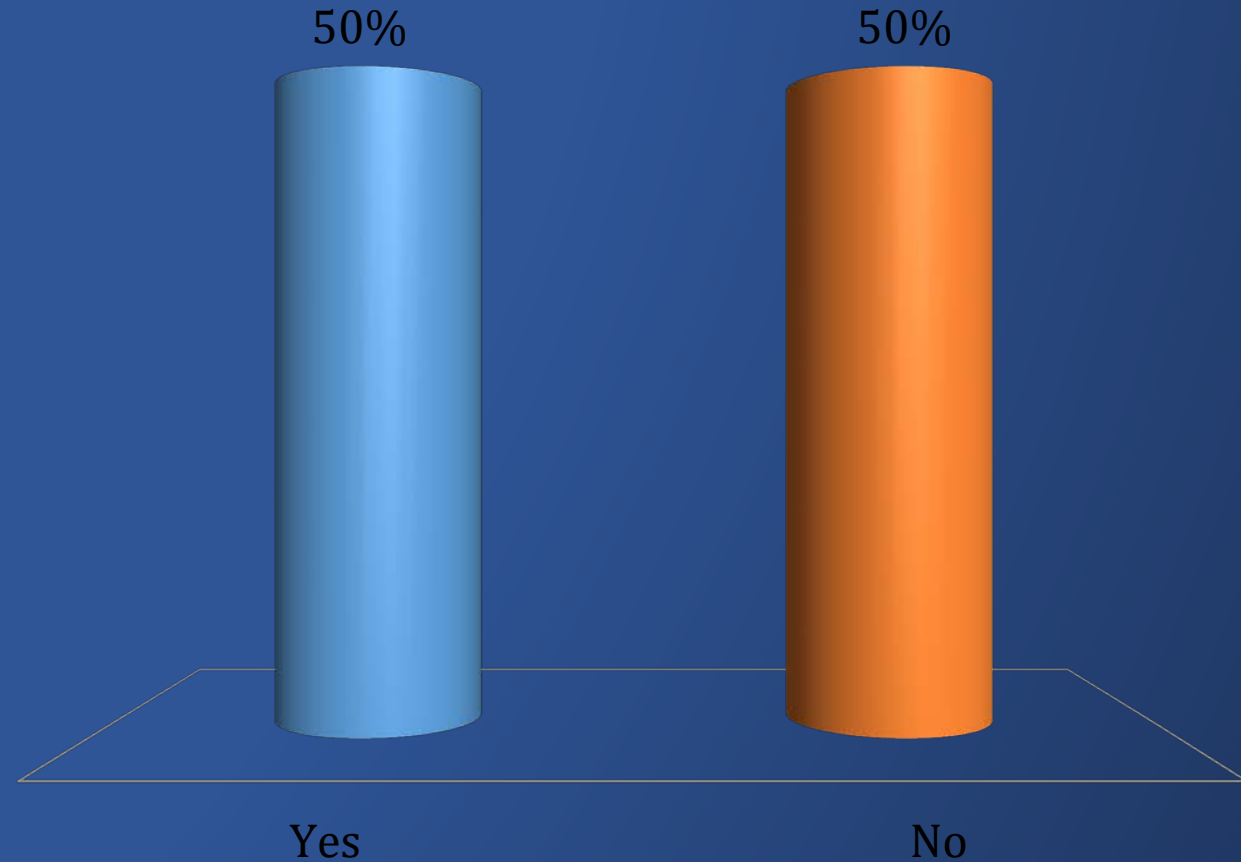
Scenario #5: Does the SOC at §2K2.1 for use/possession of a firearm in connection with another felony offense apply?

- A. Yes
- B. No



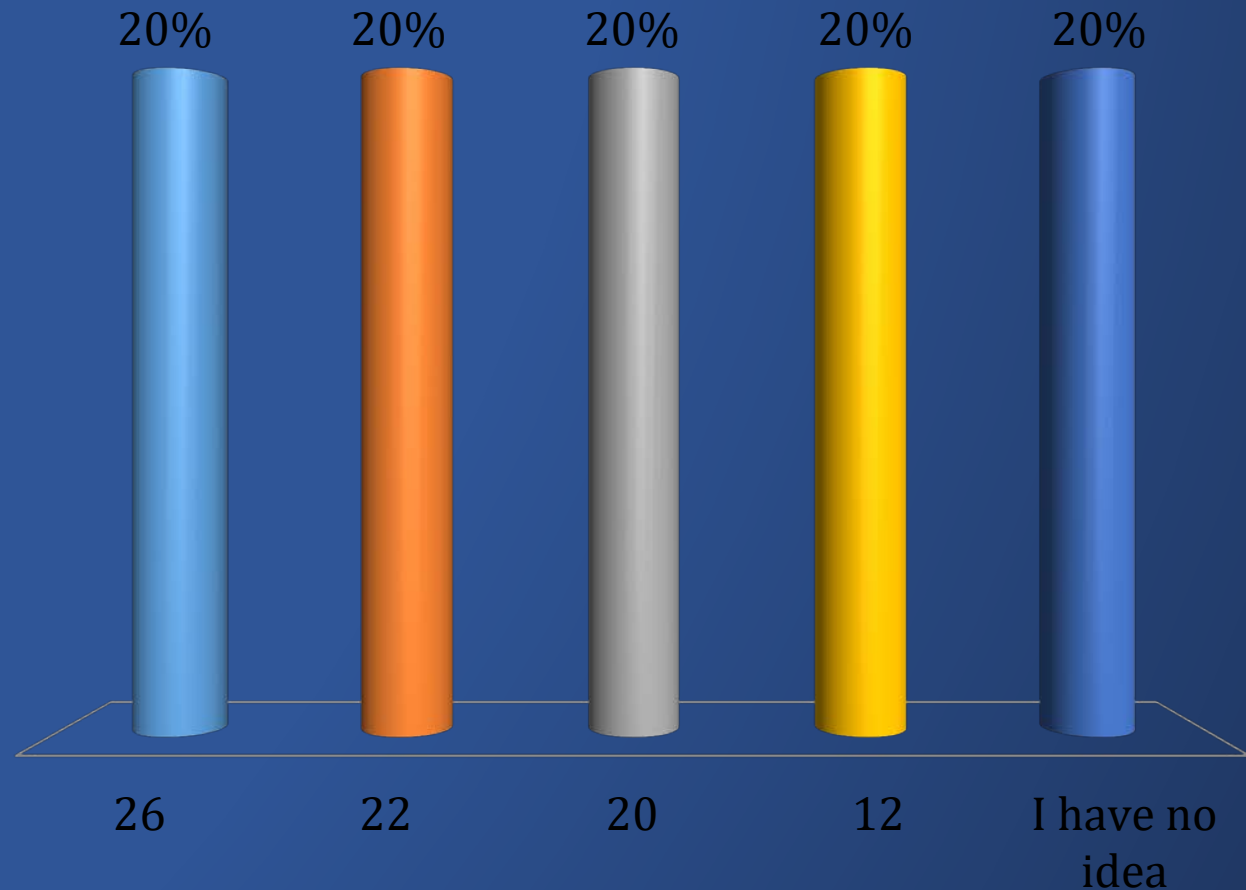
Scenario #5: Does the SOC at §2D1.1 for possession of a dangerous weapon apply?

- A. Yes
- B. No



Scenario# 6: What is the base offense level at §2K2.1?

- A. 26
- B. 22
- C. 20
- D. 12
- E. I have no idea



Scenario#6: Would the defendant's base offense level change if his previous controlled substance offense had not been assigned criminal history points?

- A. Yes
- B. No



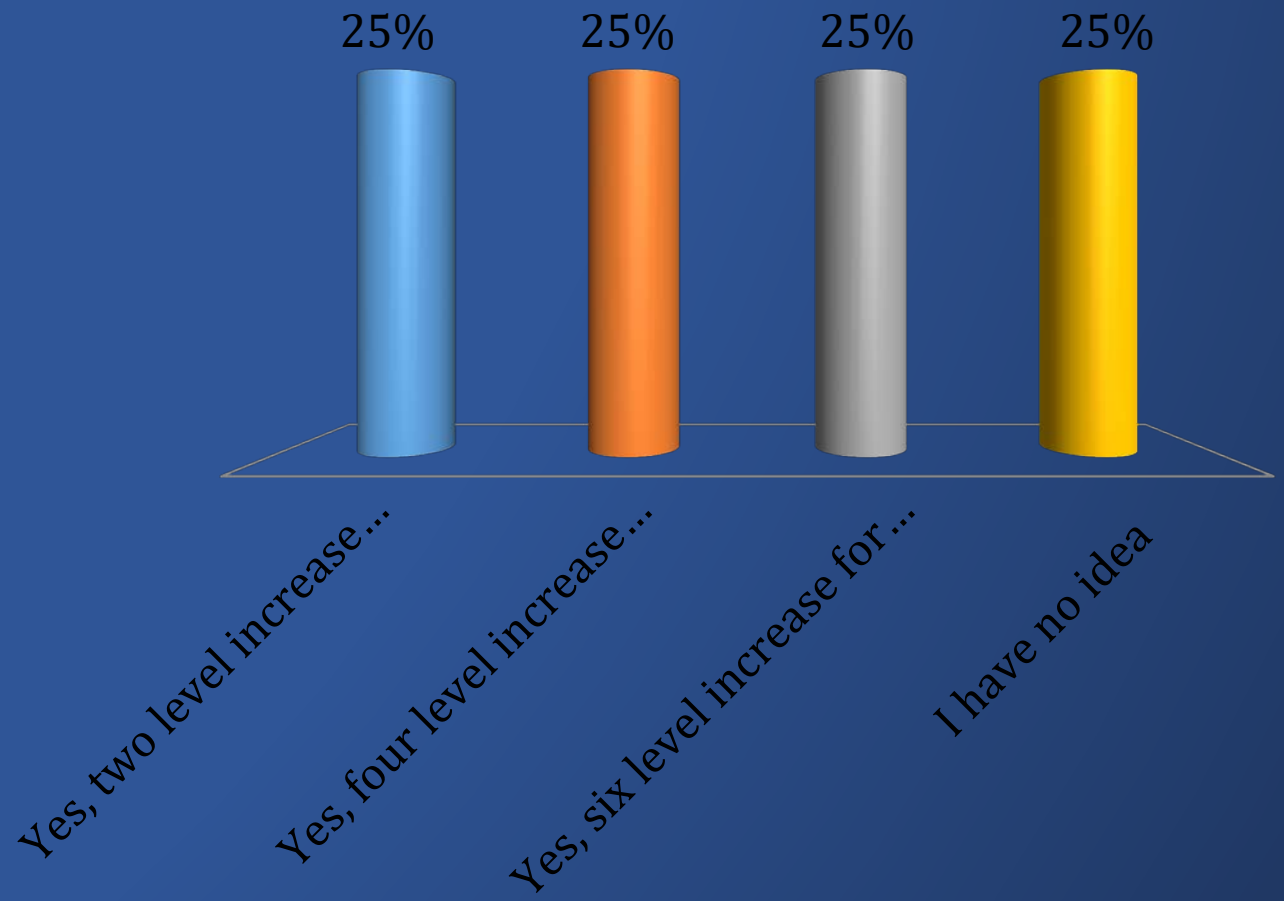
Use of “Crime of Violence” and “Controlled Substance Offense” in BOLs

- For the priors to be used in the BOLs, use only those felony convictions that receive criminal history points and are counted *separately* for Criminal History at §4A1.1(a), (b), or (c)
 - Per §2K2.1, App. Note 10
 - Note: This results in time limits on priors
 - Note: This also results in “single/separate” determinations



Scenario# 6: Do the SOC's at §2K2.1 for the firearms being stolen and having altered/obliterated serial number apply?

- A. Yes, two level increase for stolen firearm
- B. Yes, four level increase for altered/obliterated serial number
- C. Yes, six level increase for stolen and altered/obliterated serial number
- D. I have no idea



Stolen Gun/Obliterated Serial Number SOC

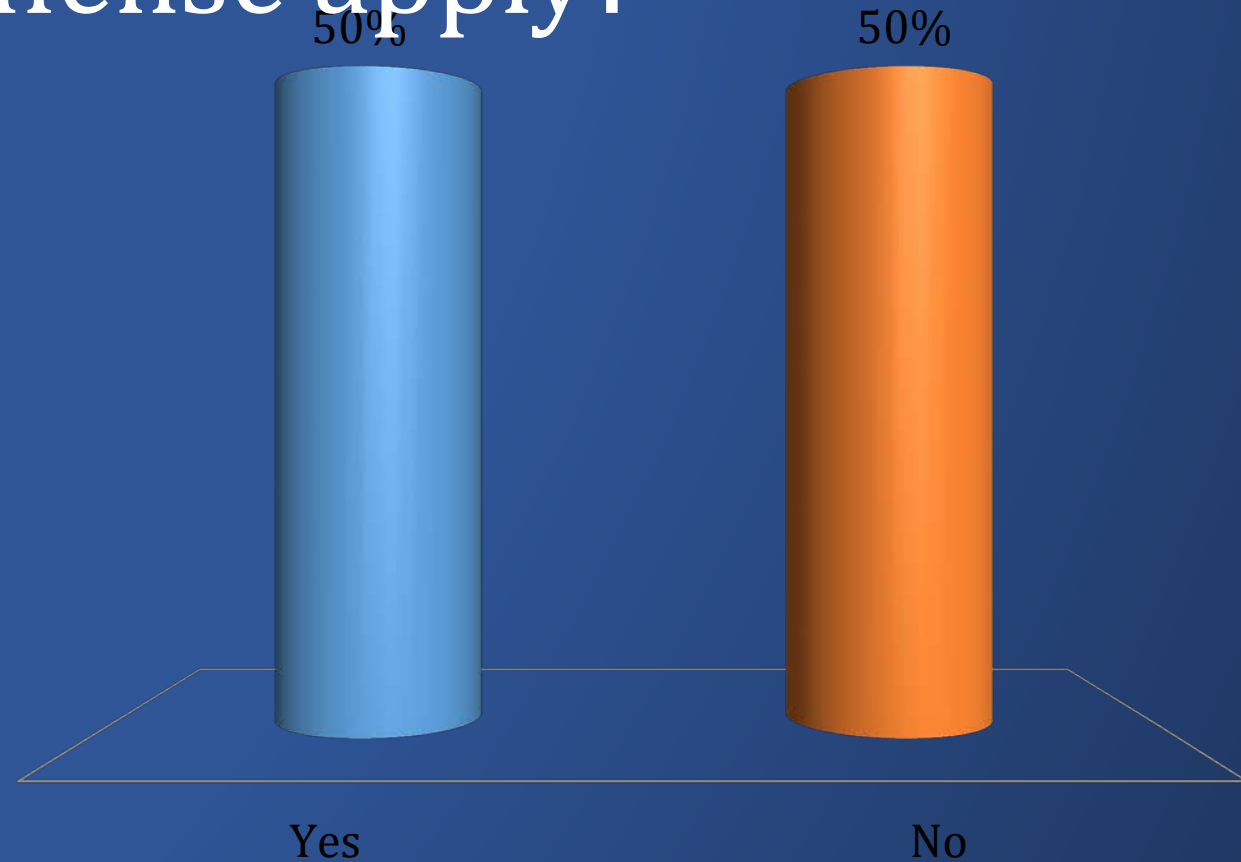
§2K2.1(b)(4), App. Note 8

- Strict liability standard
- If any firearm
 - Was stolen, increase by 2 levels
- **OR**
(i.e., cannot give both; use the greater)
- Had an altered or obliterated serial number, increase by 4 levels



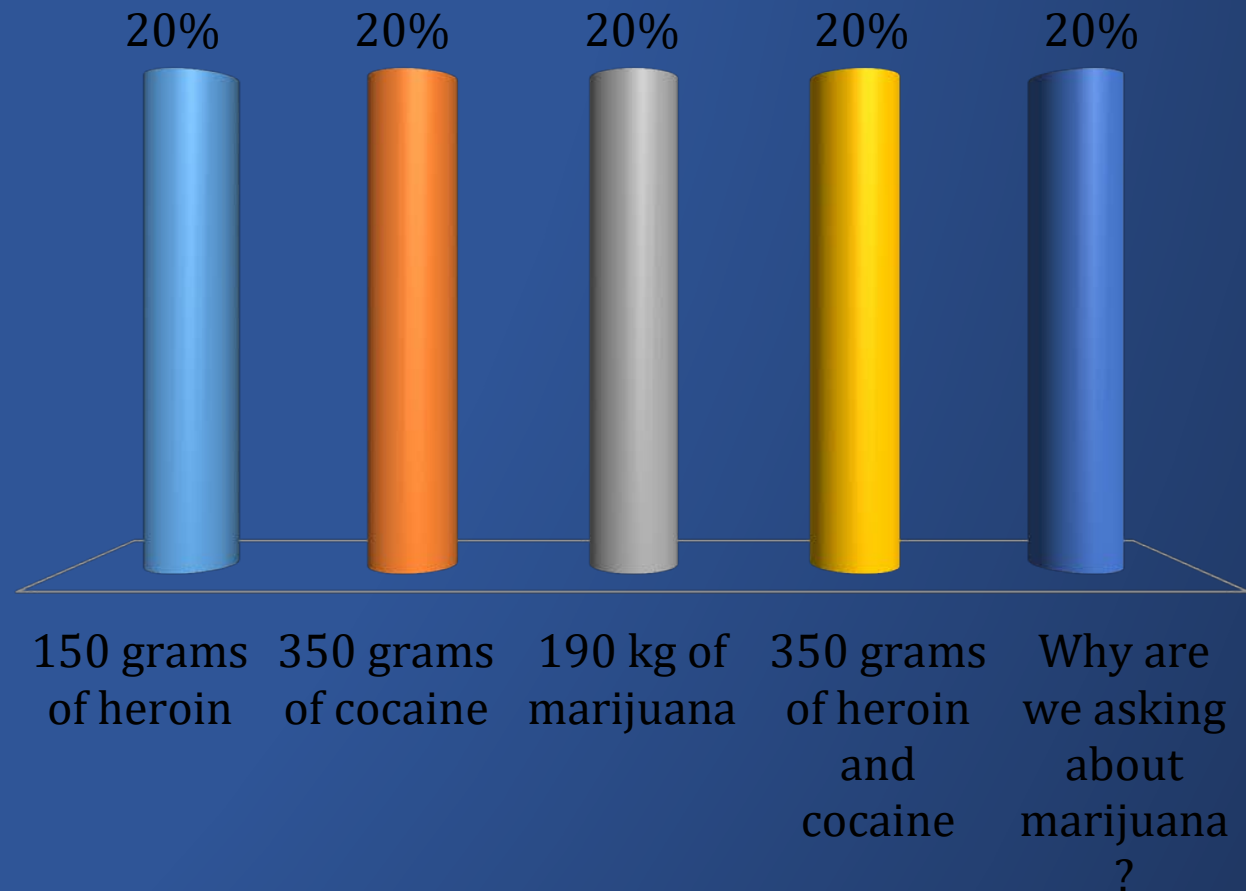
Scenario #6: Does the SOC at §2K2.1 for use/possession of a firearm in connection with another felony offense apply?

- A. Yes
- B. No



Scenario# 7: What is the total marijuana equivalency of all the drugs in this case?

- A. 150 grams of heroin
- B. 350 grams of cocaine
- C. 190 kg of marijuana
- D. 350 grams of heroin and cocaine
- E. Why are we asking about marijuana ?



Drug *Equivalency* Tables

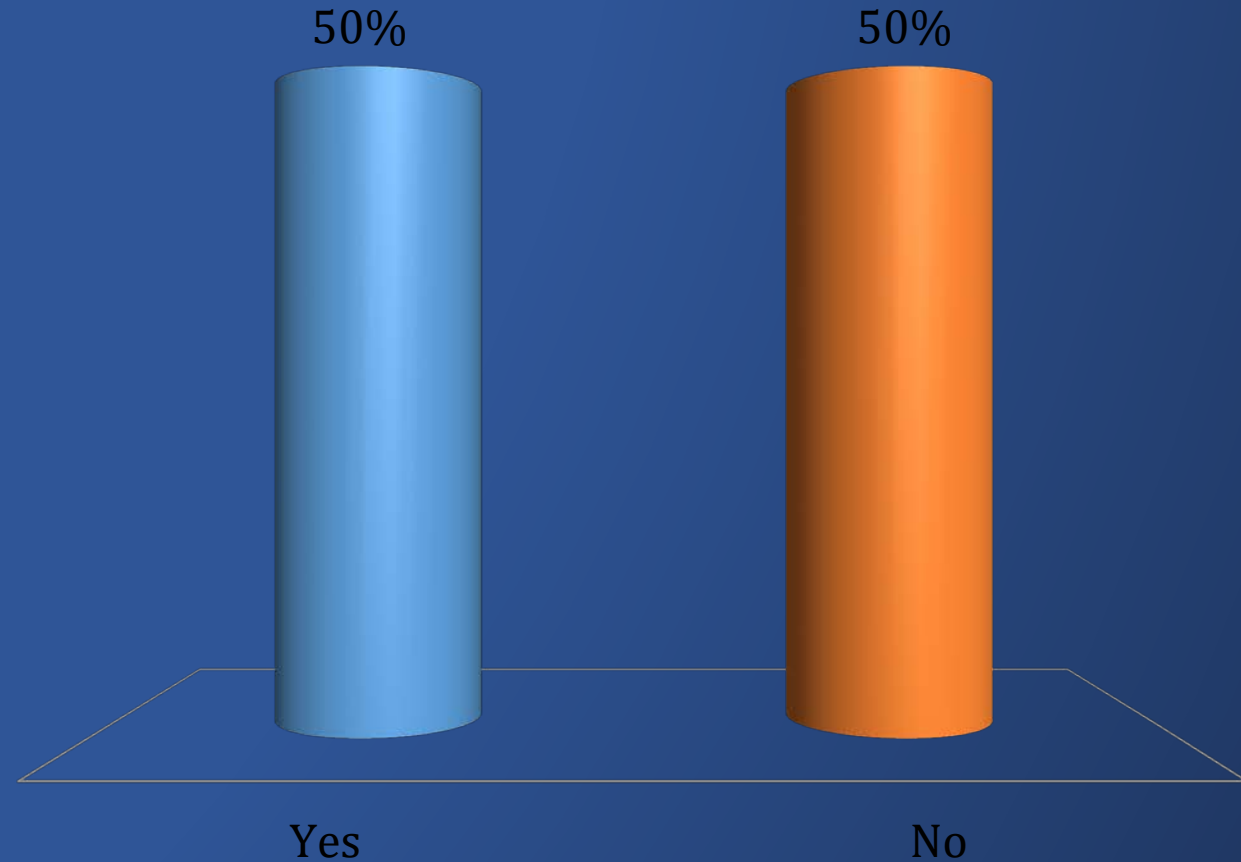
§2D1.1, App. Note 8

- 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



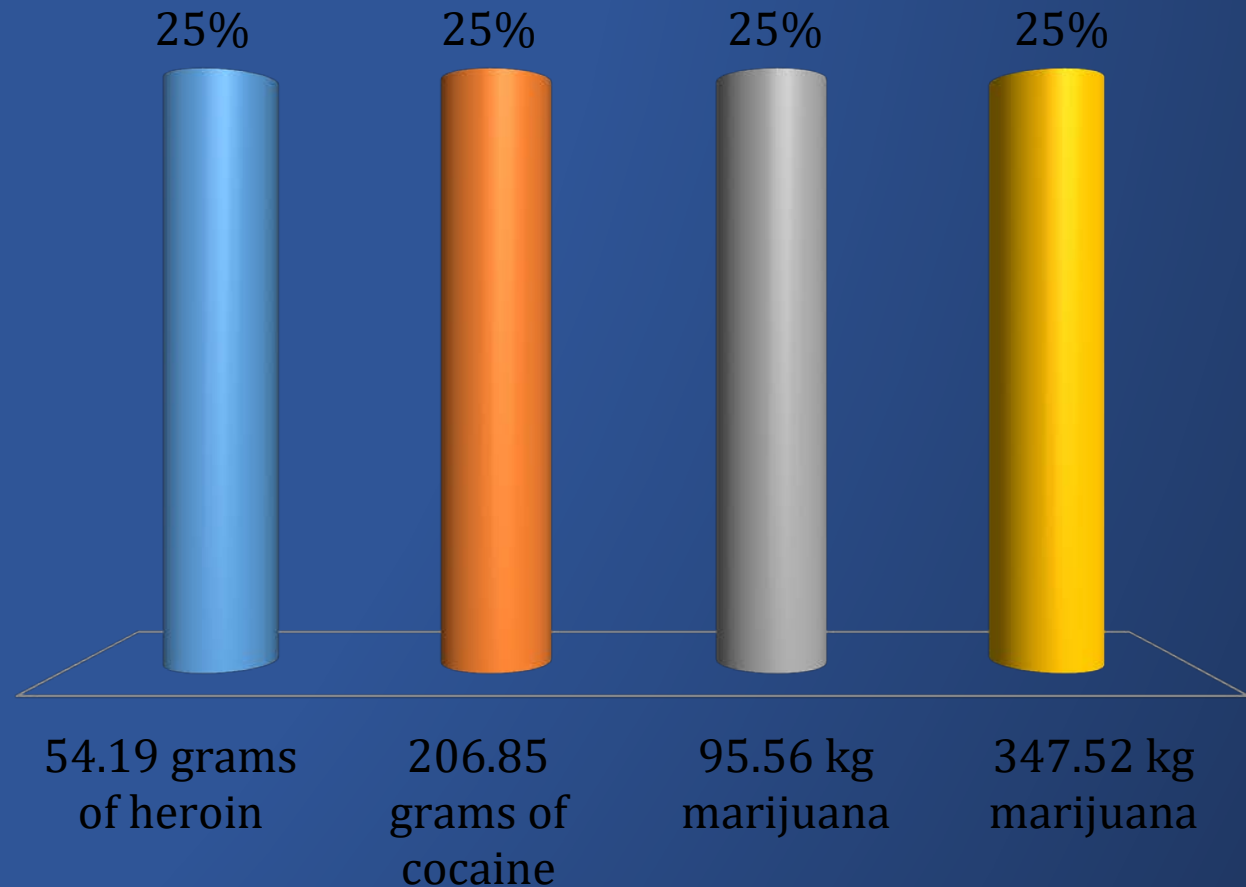
Scenario# 7: Does the SOC at §2D1.1 for possession of a dangerous weapon apply?

- A. Yes
- B. No



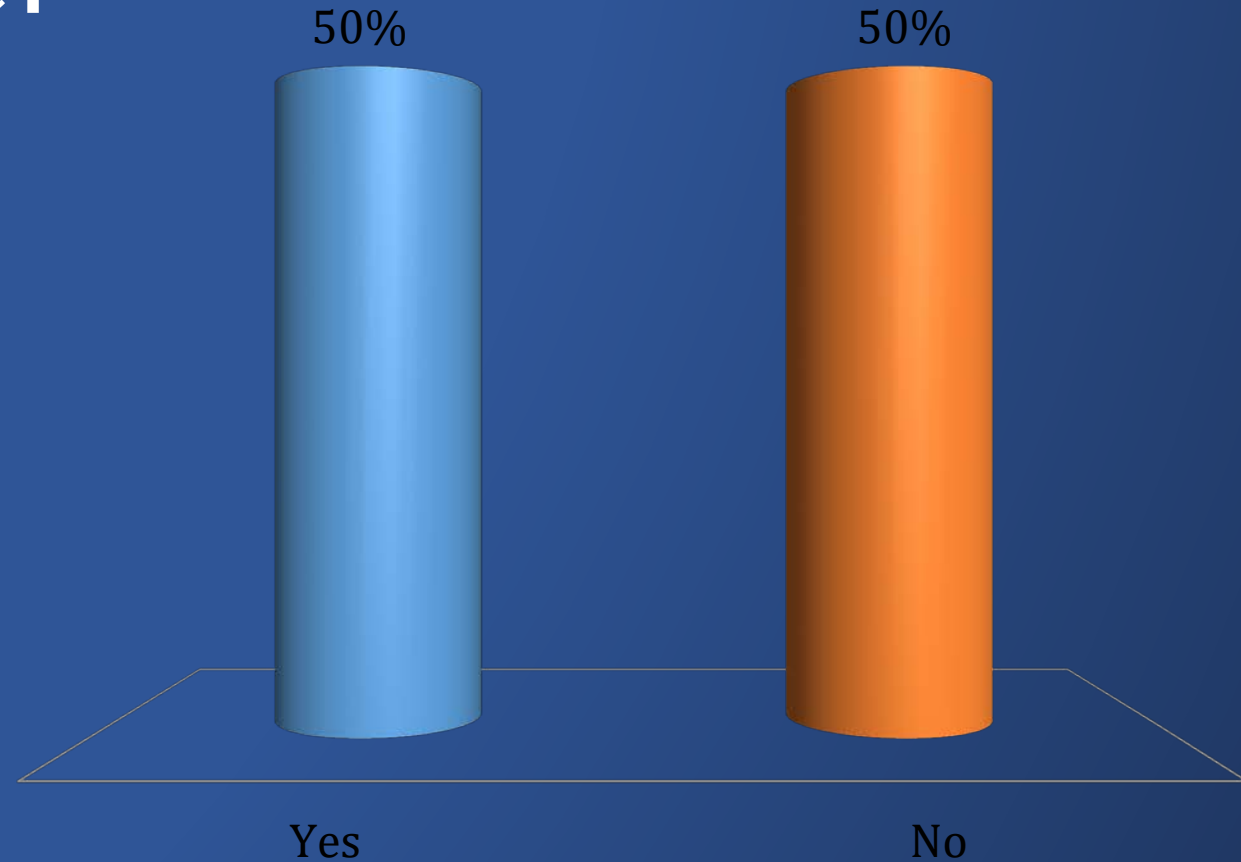
Scenario# 8: What is the quantity of drugs that will be used to calculate the guidelines at §2D1.1?

- A. 54.19 grams of heroin
- B. 206.85 grams of cocaine
- C. 95.56 kg marijuana
- D. 347.52 kg marijuana



Scenario# 8: Is the Chapter Three Adjustment for Aggravating Role applicable in this case?

- A. Yes
- B. No



Application of Multiple Counts that Do Not Group under “Rule (d)”

Count 1

Chapter Two

Chapter Three

- Victim
- Role
- Obstruction

= adjusted offense level

Count 2

Chapter Two

Chapter Three

- Victim
- Role
- Obstruction

= adjusted offense level

- **Multiple Counts Adjustment**
(Process of Grouping and Assignment of Units)

= Combined Adjusted Offense Level

- Acceptance

= Offense Level Total



Applying §2S1.1

- Base Offense Level: (a)(1) or (a)(2)?
 - Defendant is either a “direct” (a)(1) or “third party” (a)(2) money launderer
- If defendant is a “direct” money laundering, apply the entire Chapter Two guideline for the underlying offense from which the laundered funds were derived
- Chapter Three Adjustments:
 - Application of Chapter Three Adjustments shall be determined based on the offense covered by this guideline and not the underlying offense (§2S1.1 AN 2(C))

