



# Drugs and Guns



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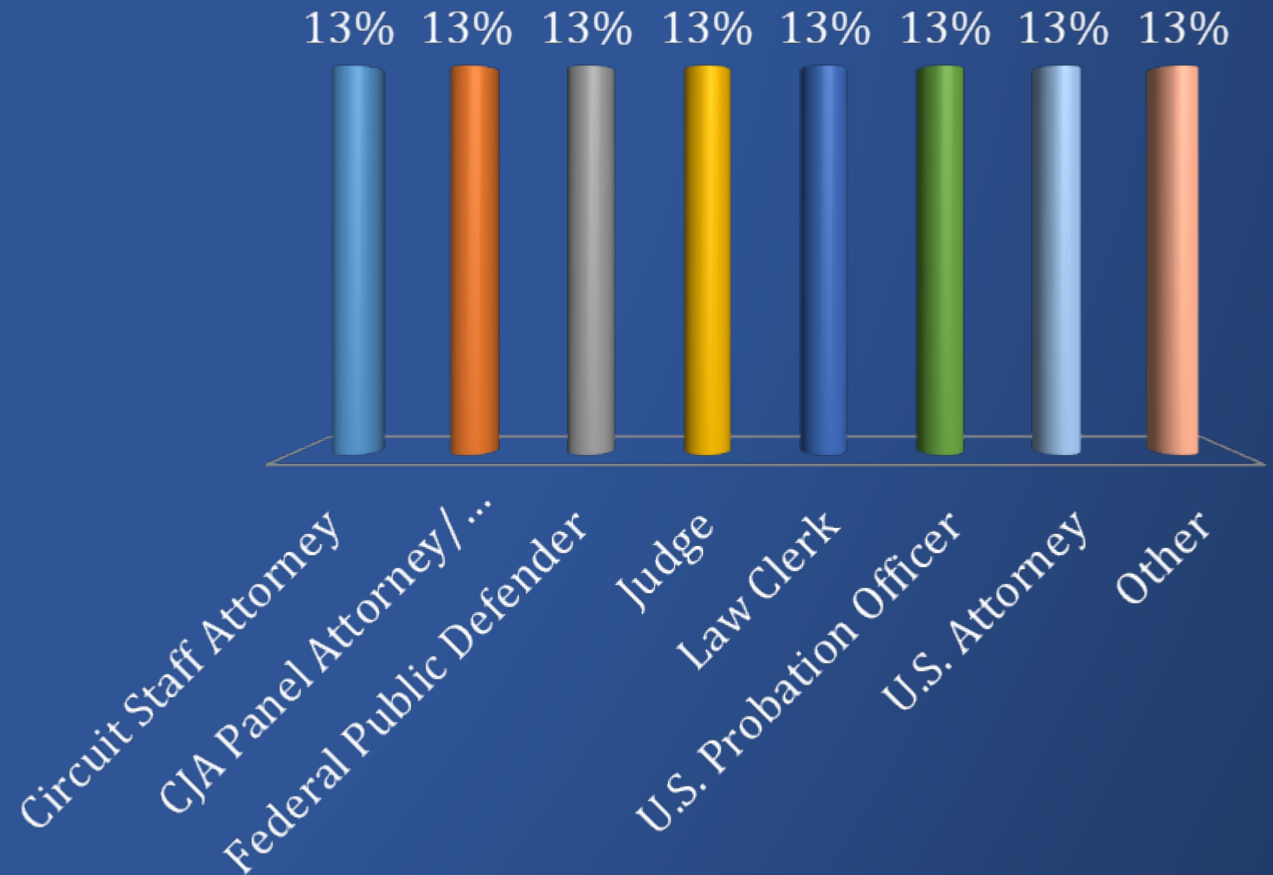
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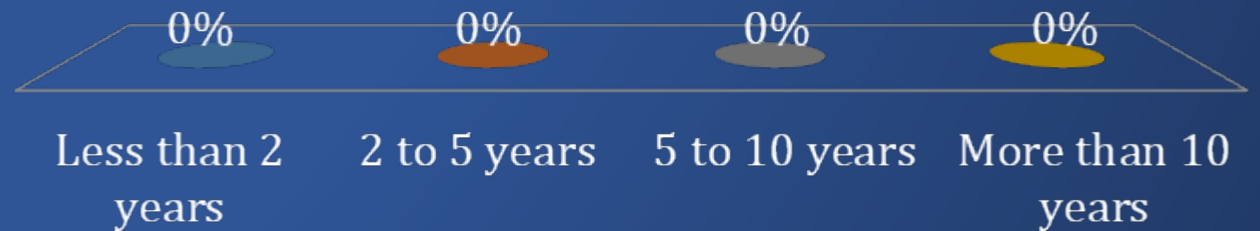
# Who's in the audience?

- A. Circuit Staff Attorney
- B. CJA Panel Attorney/  
Private Defense Attorney
- C. Federal Public Defender
- D. Judge
- E. Law Clerk
- F. U.S. Probation Officer
- G. U.S. Attorney
- H. Other



# Years of experience with federal sentencing?

- A. Less than 2 years
- B. 2 to 5 years
- C. 5 to 10 years
- D. More than 10 years





# §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

**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**





# §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 BOIs

- 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



# Drugs and Guns and Relevant Conduct

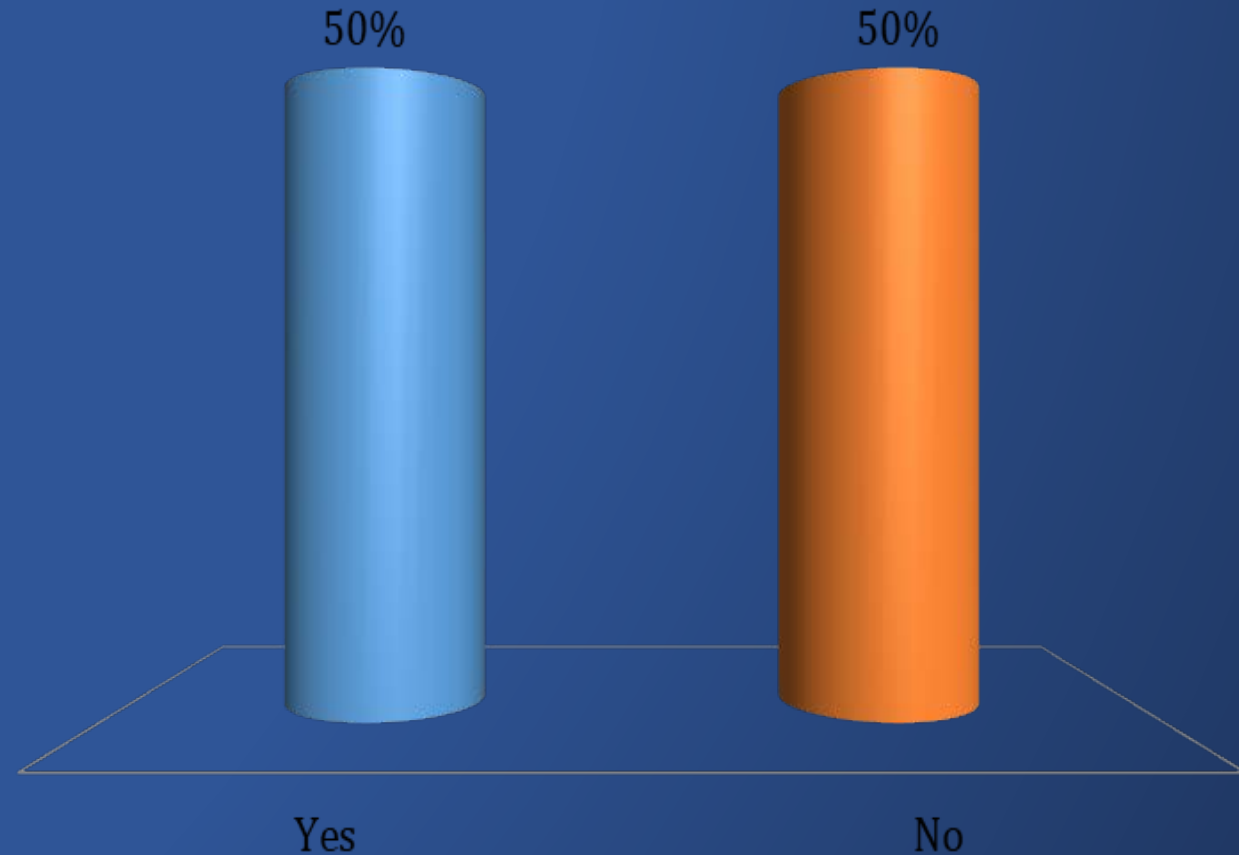
§§2D1.1, 2K2.1 & 1B1.3(a)(2)

- 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's

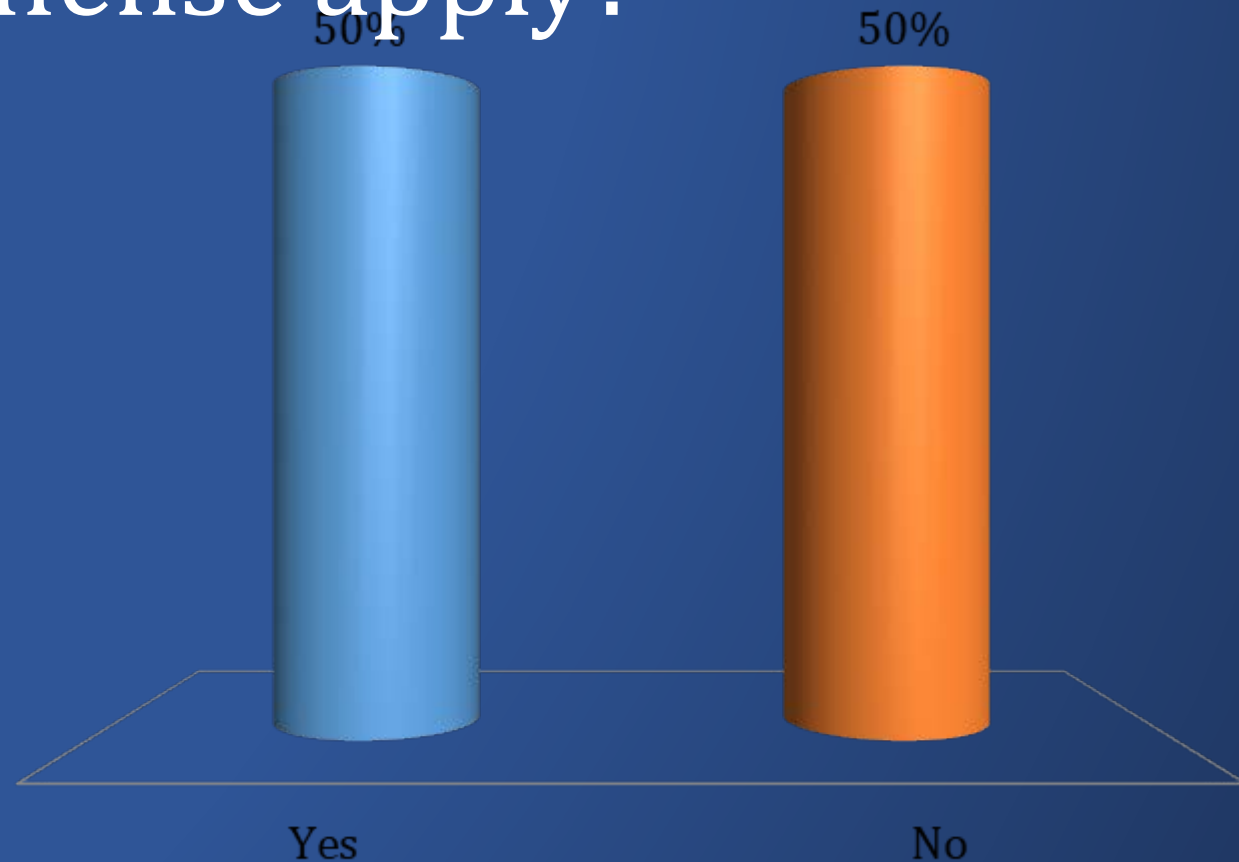
## §2K2.4, App. Note 4

- **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



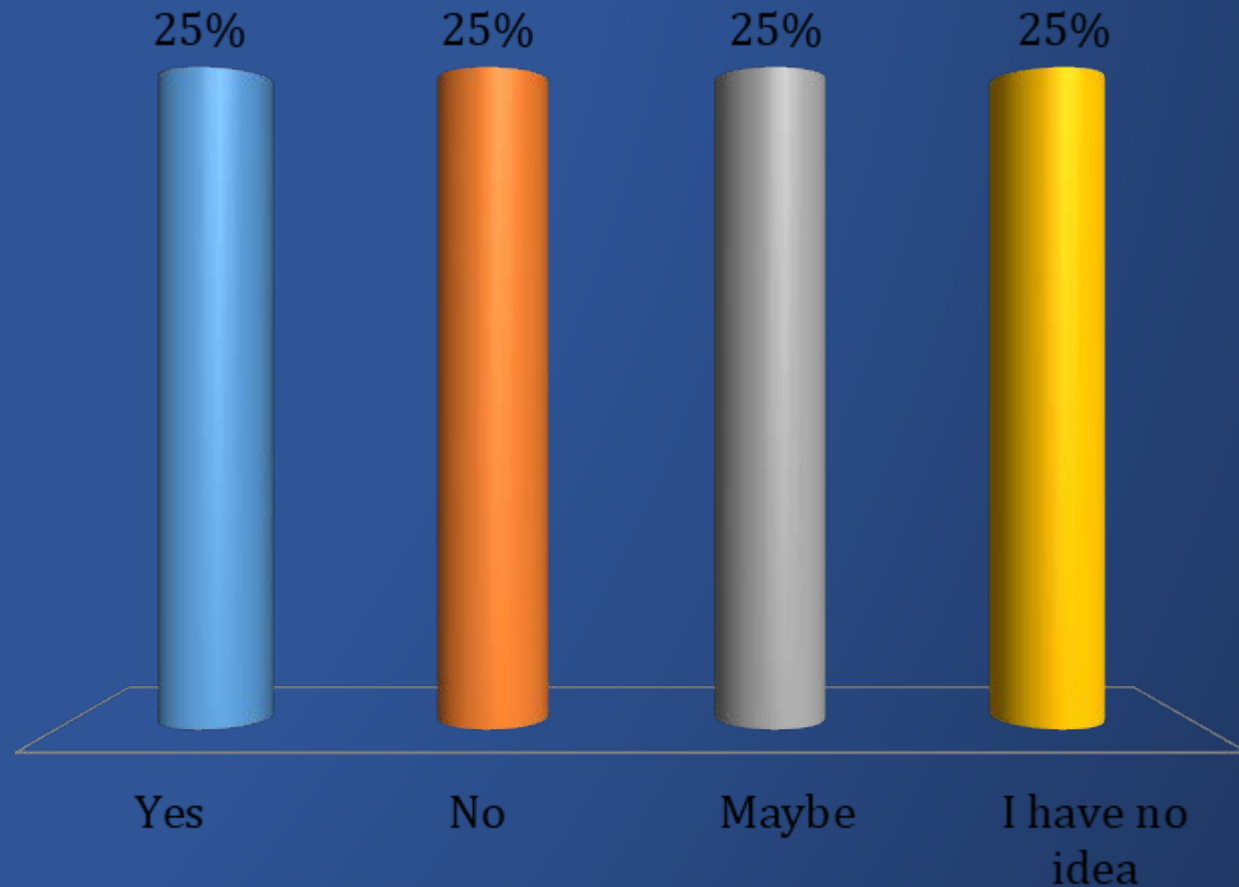
Scenario#1: Does the SOC at §2K2.1 for using/possessing a firearm in connection with another felony offense apply?

- 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**

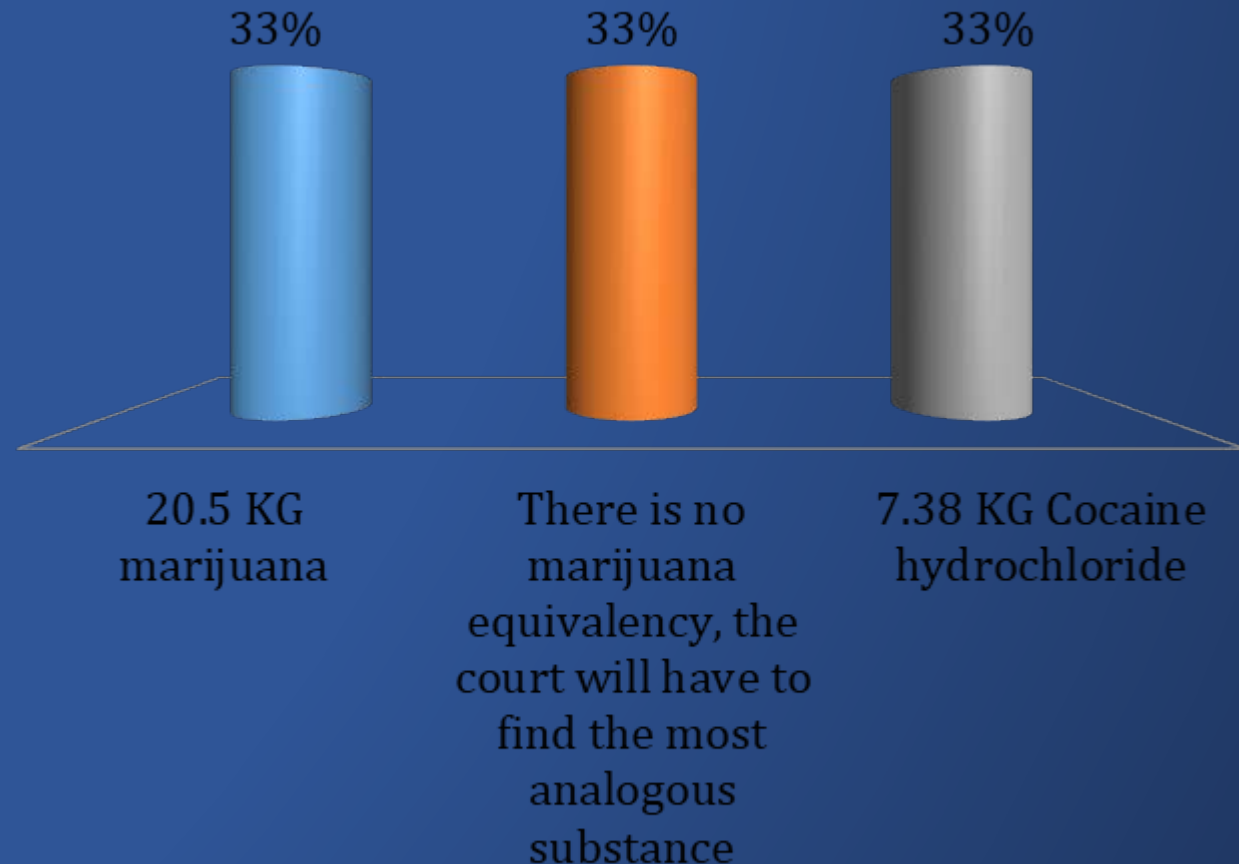
- Possessed or transferred a firearm or ammunition cited in the offense of conviction with knowledge or intent that it would be used or possessed in connection with another felony offense

**Apply the cross reference**



# Scenario #2: What is the marijuana equivalency of the drugs in this case?

- A. 20.5 KG marijuana
- B. There is no marijuana equivalency, the court will have to find the most analogous substance
- C. 7.38 KG Cocaine hydrochloride



# 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



# 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



# Proposed Amendment for Synthetic Drugs (Submitted to Congress May 1, 2018)

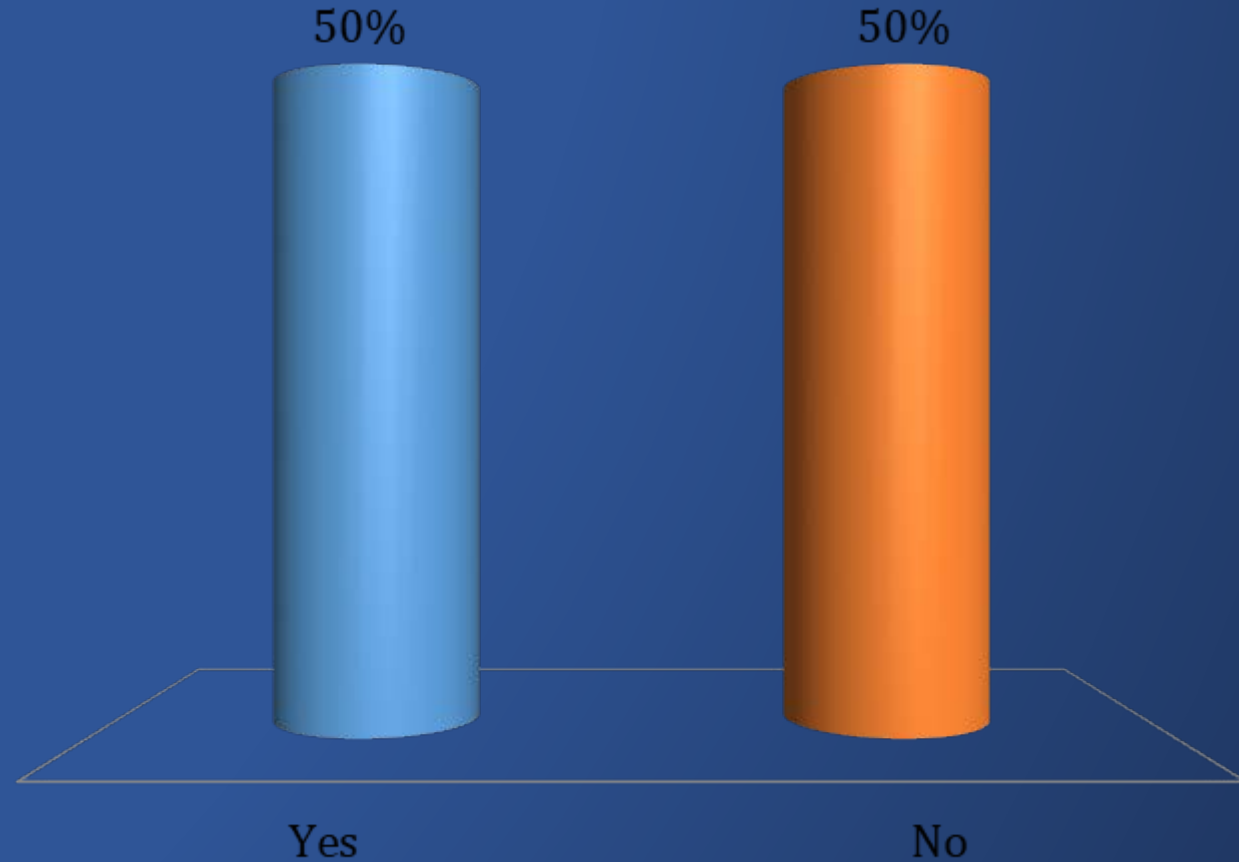
- Three part amendment addressing synthetic cathinones, synthetic cannabinoids, fentanyl and fentanyl analogues
- Synthetic cathinones-
  - Class based approach: 1gram = 380 grams marihuana
- Synthetic cannabinoids-
  - Class based approach 1gram = 167 grams marihuana
- Fentanyl analogues-
  - 1 gram = 10 kilograms marihuana



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

A. Yes

B. No





# Impact of § 924(c) on SOC's

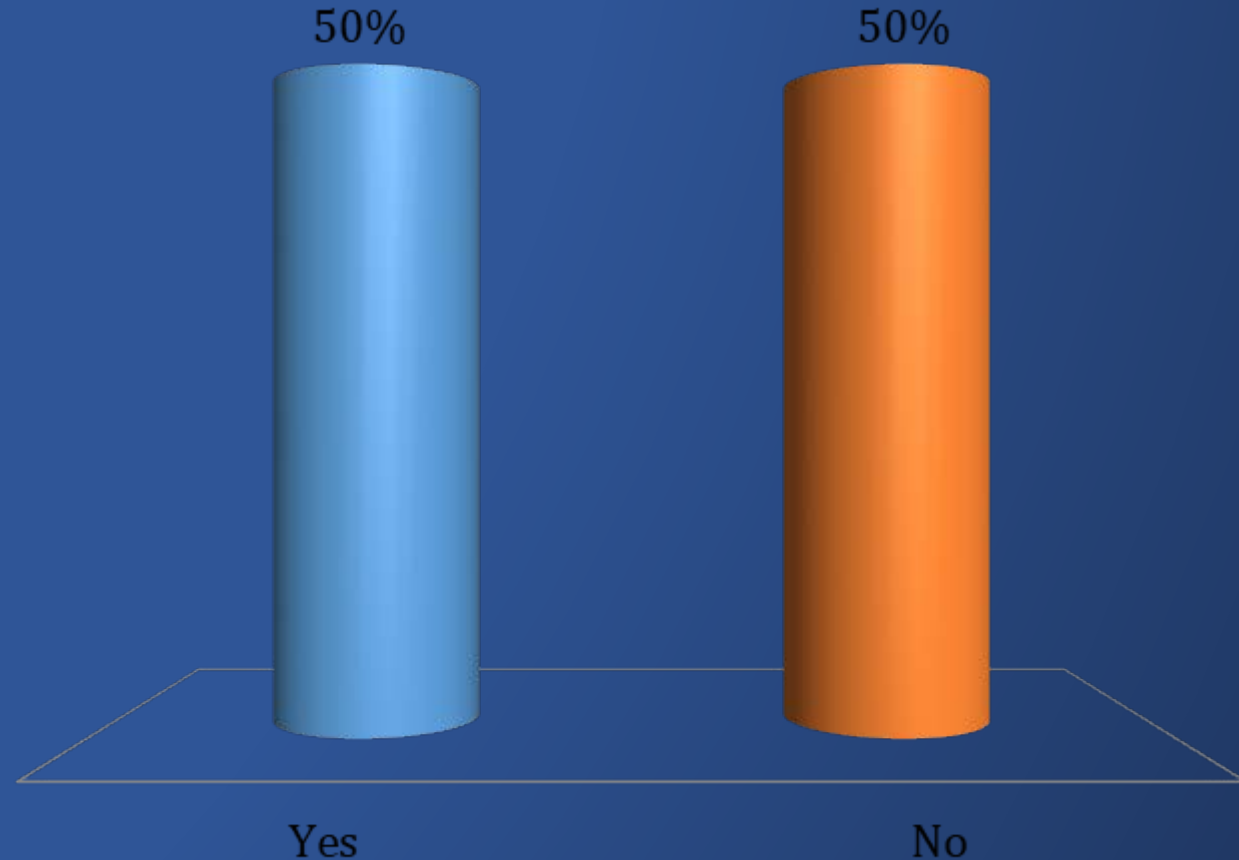
§2K2.4, App. Note 4

- **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 #3: Does the SOC at §2D1.1 for possession of a firearm apply?

- A. Yes
- B. No



# Impact of § 924(c) on SOC's

§2K2.4, App. Note 4

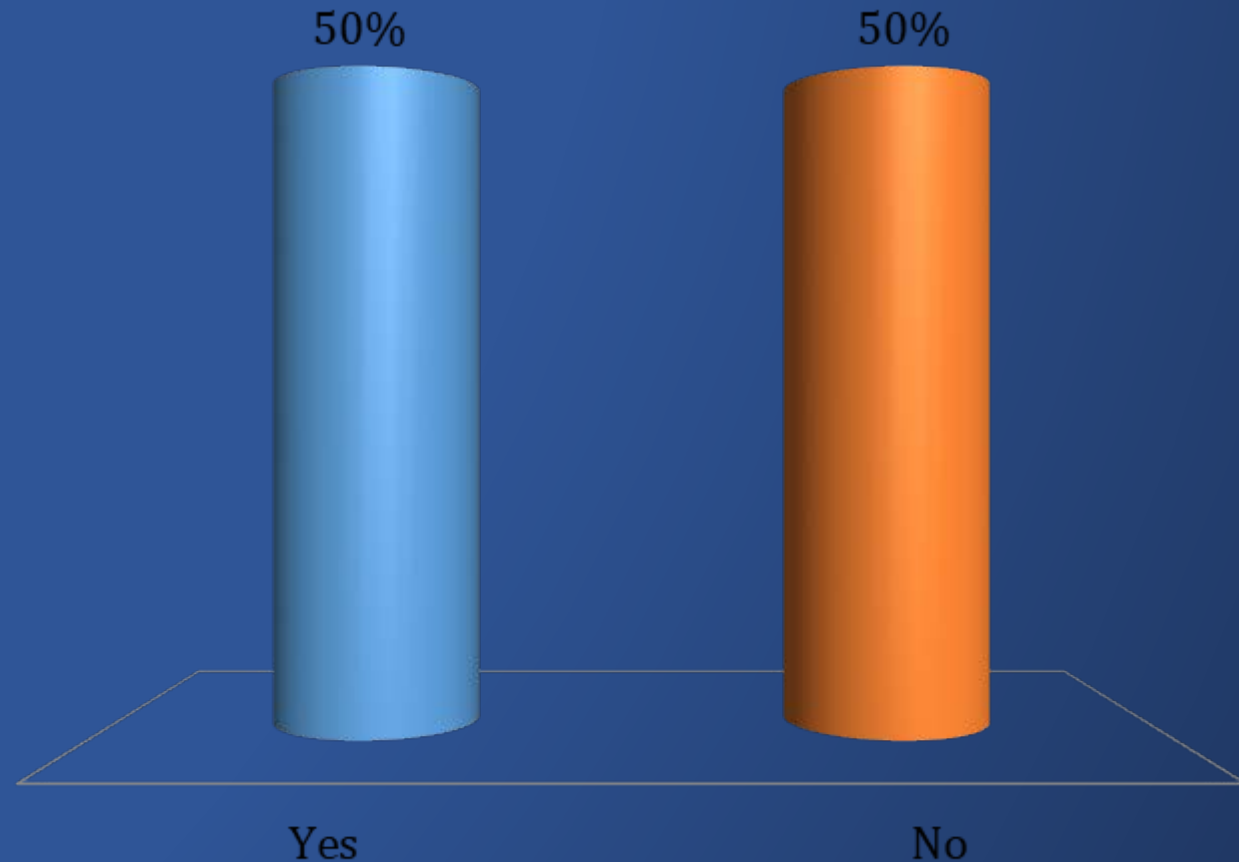
- **Do not apply** the firearm (weapon) SOC in guideline for the *underlying* offense
  - § 924(c) accounts for any weapon SOC for the underlying offense
  - § 924(c) accounts for any weapon within the relevant conduct



# Scenario#4: Does the Career Offender (§4B1.1) override apply?

A. Yes

B. No



# Career Offender “Override”

§4B1.1; Pursuant to Directive at 28 § 994(h)

- Criminal History Category is VI
- Offense level determined by a table based on statutory maximum
  - Unless the offense level from Chapters Two and Three is greater



**Statutory  
Maximum****Offense  
Level \***

Life

37

25 years +

34

20 years +

32

15 years +

29

10 years +

24

5 years +

17

More than 1 year

12



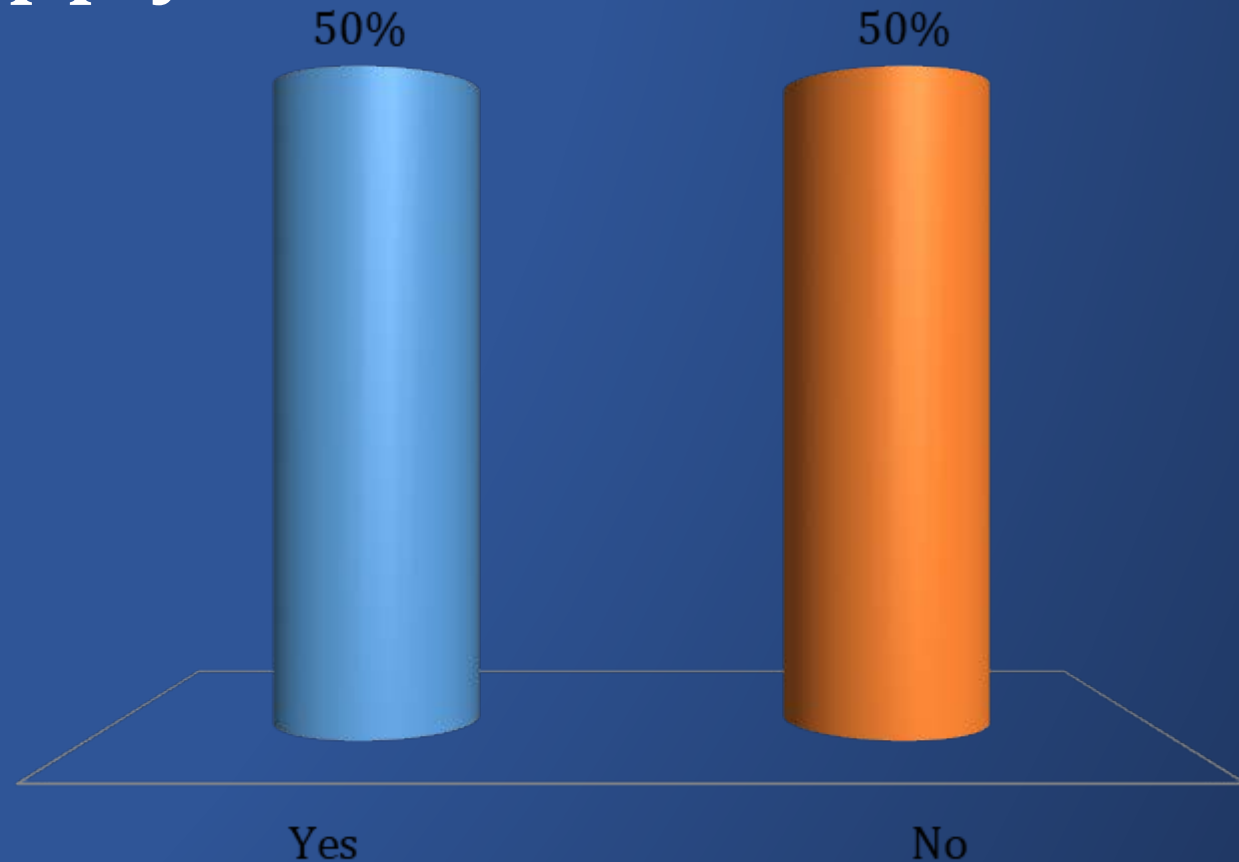
**Decrease by number of levels (0 or -2 or -3) at §3E1.1 (Acceptance of Responsibility)**



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

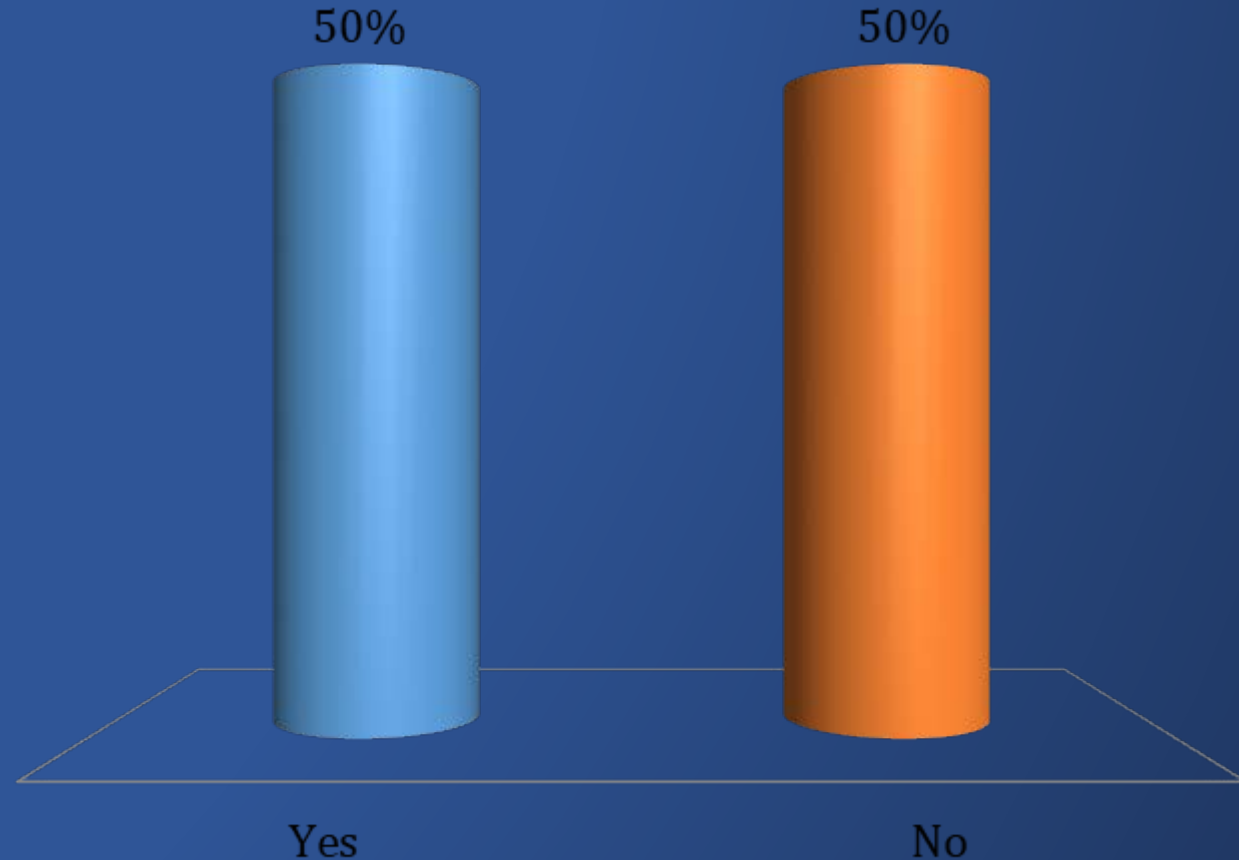




# Scenario #5: Does the SOC for possession of a dangerous weapon at §2D1.1 apply?

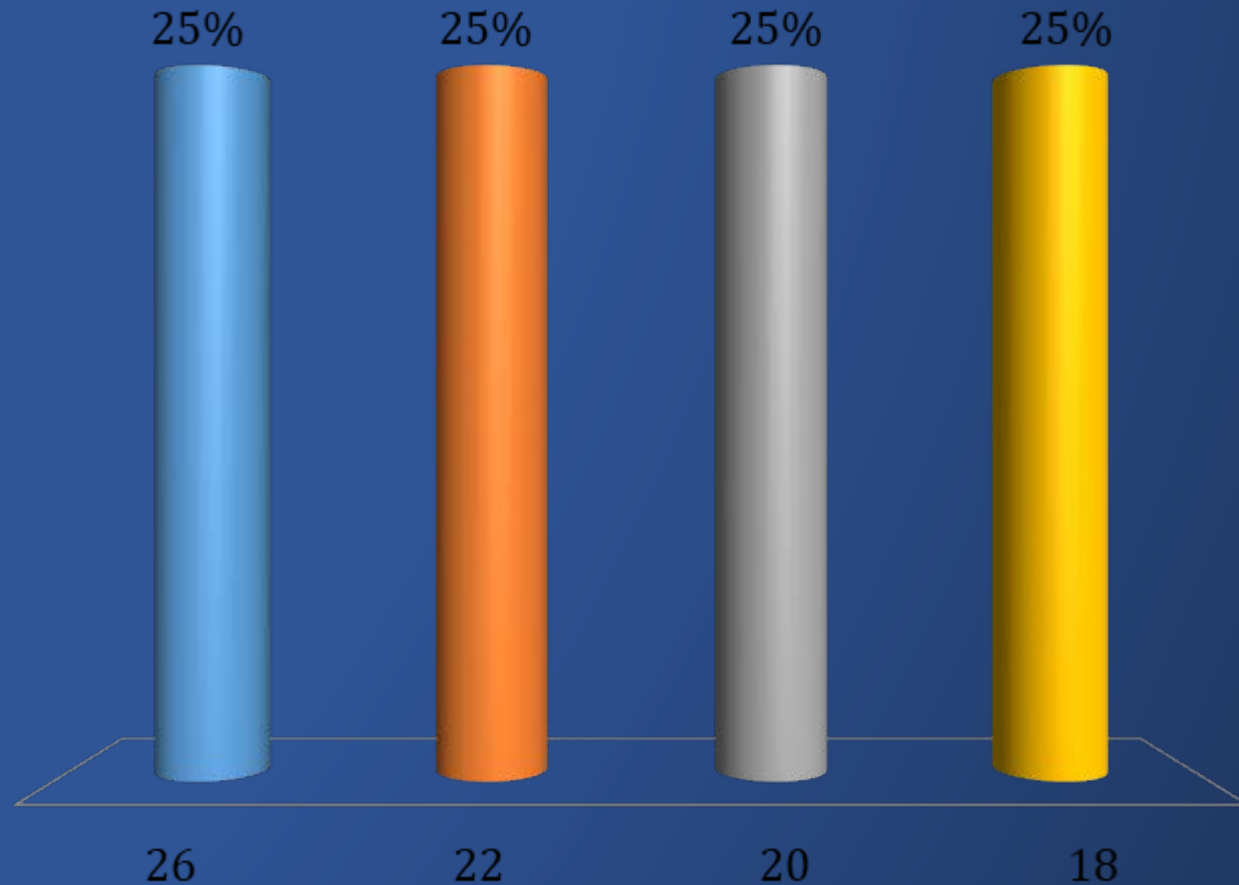
A. Yes

B. No



# Scenario# 6: What is the BOL at §2K2.1?

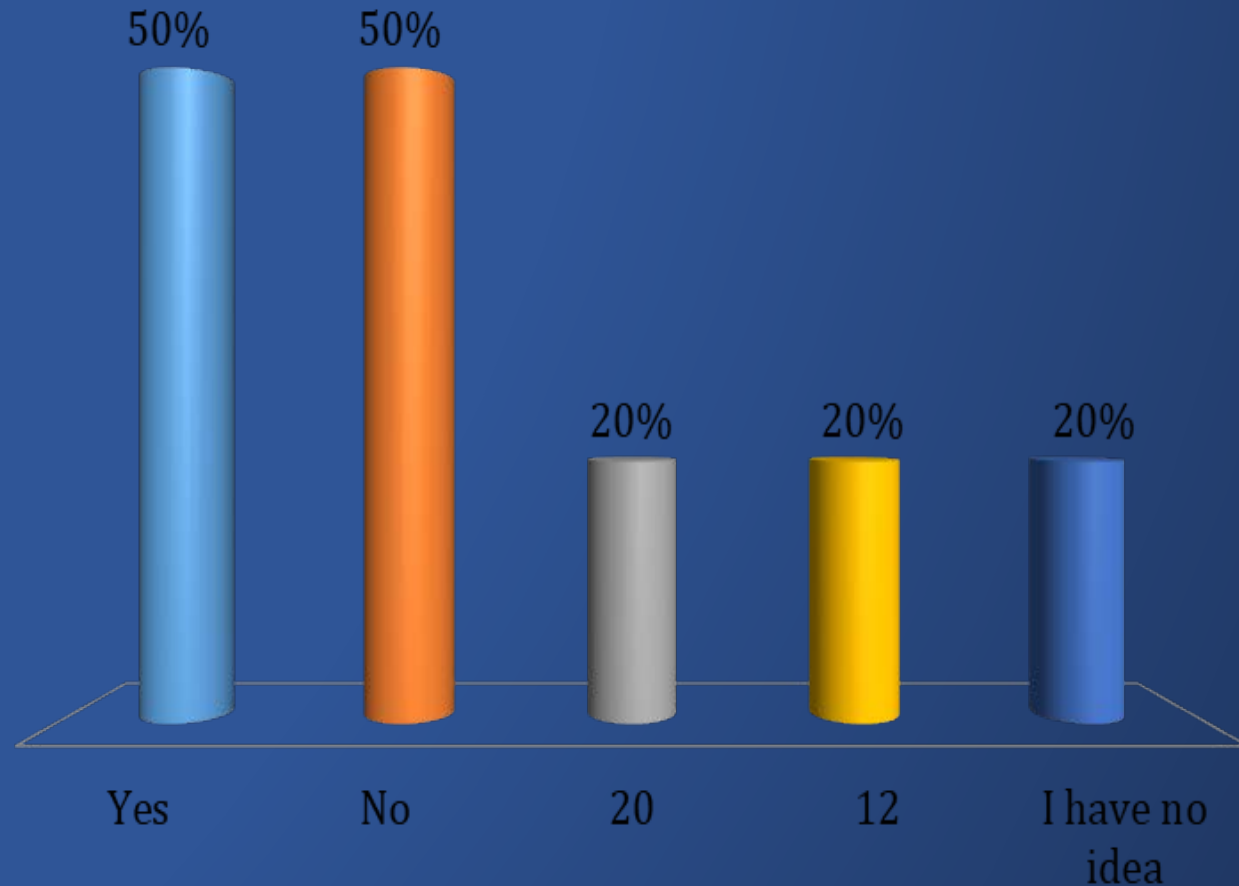
- A. 26
- B. 22
- C. 20
- D. 18



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



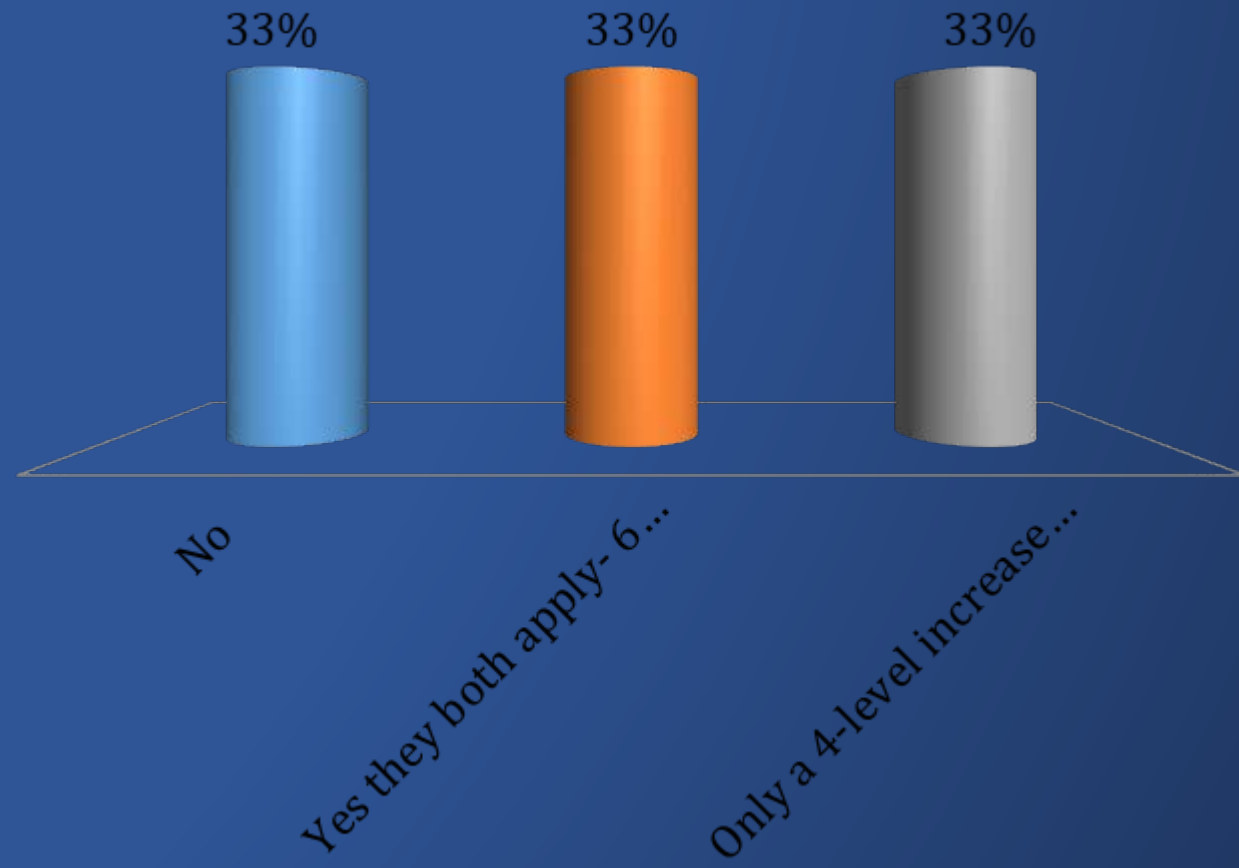
## Use of “Crime of Violence” and “Controlled Substance Offense” in BOLs

- 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 for a firearm being stolen and having an altered or obliterated serial number apply?

- A. No
- B. Yes they both apply- 6 level increase
- C. Only a 4-level increase for altered/obliterated serial number



# Stolen Gun/Obliterated Serial Number SOC

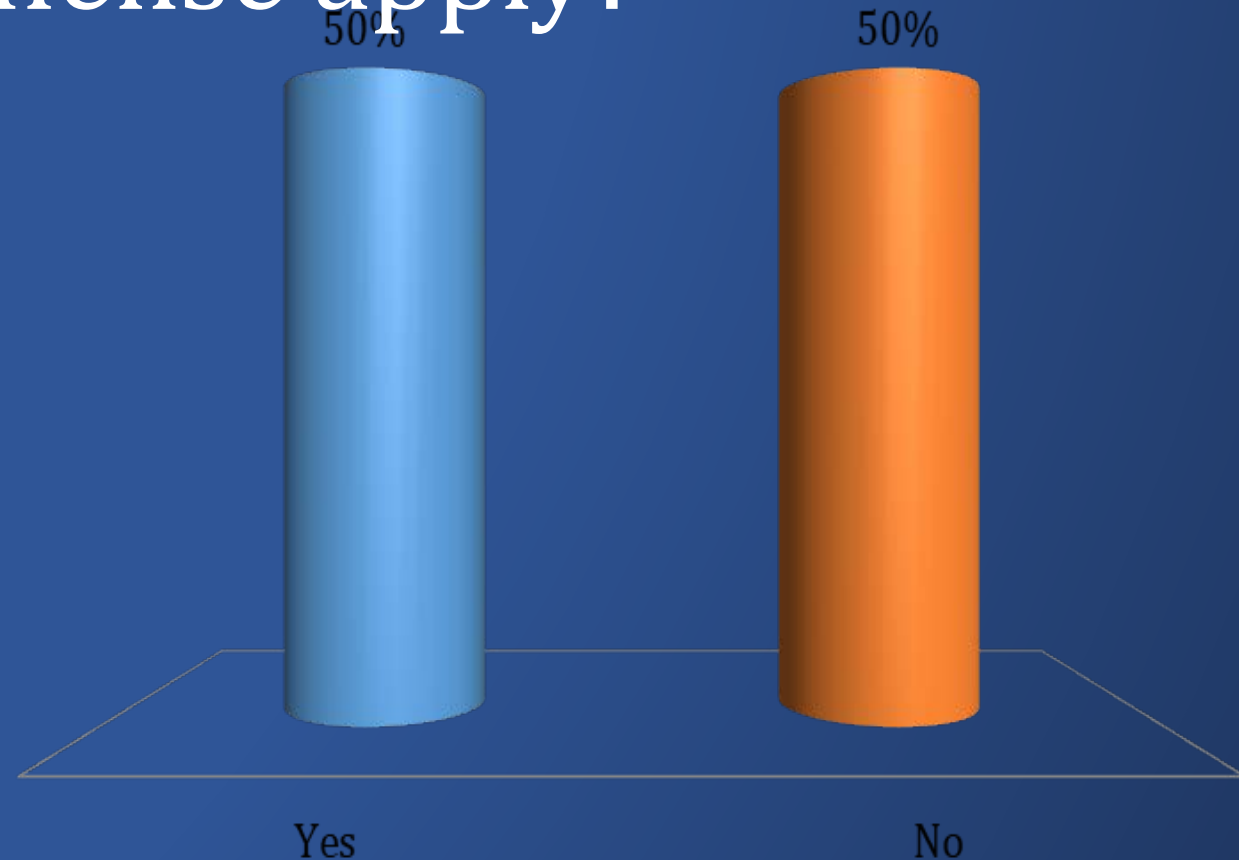
§2K2.1(b)(4), App. Note 8

- 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?

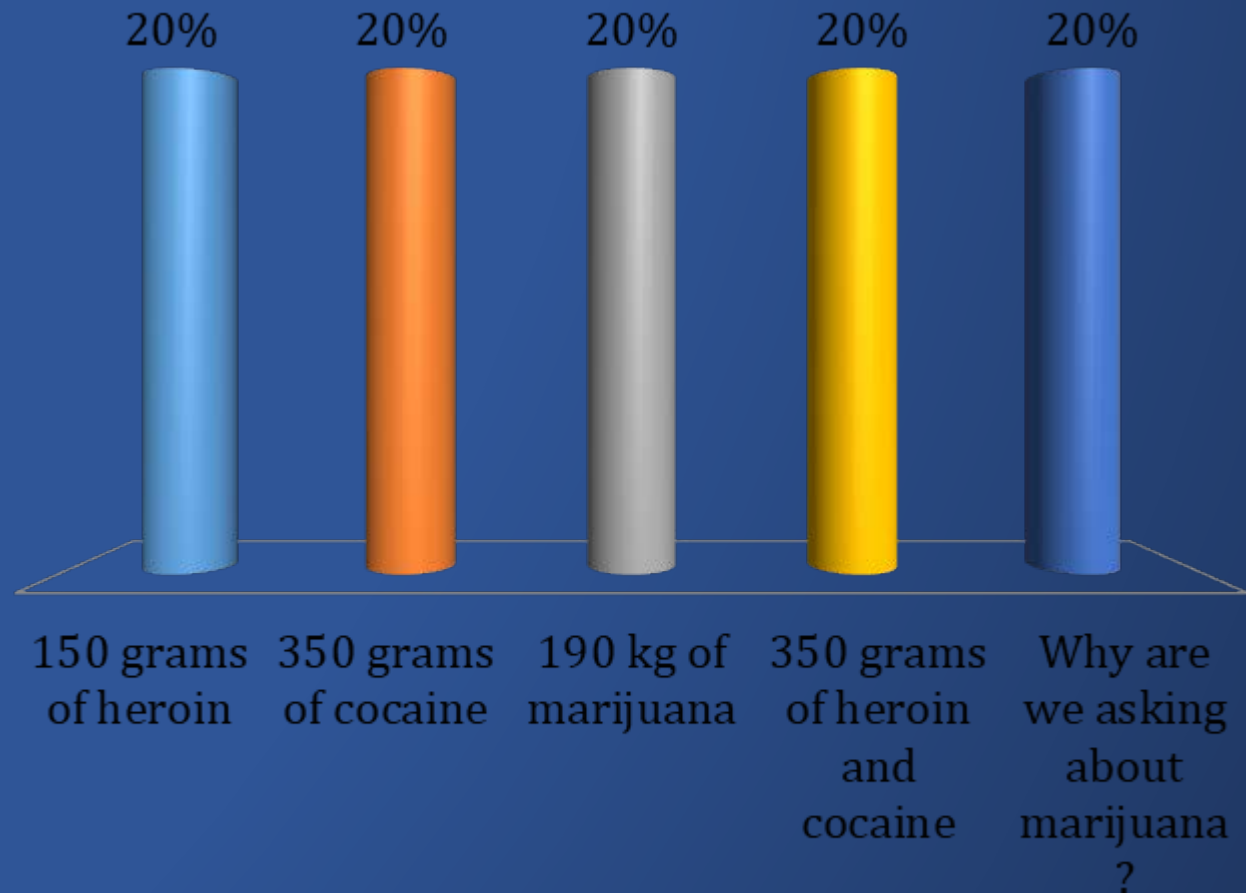
- A. Yes
- B. No





# 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

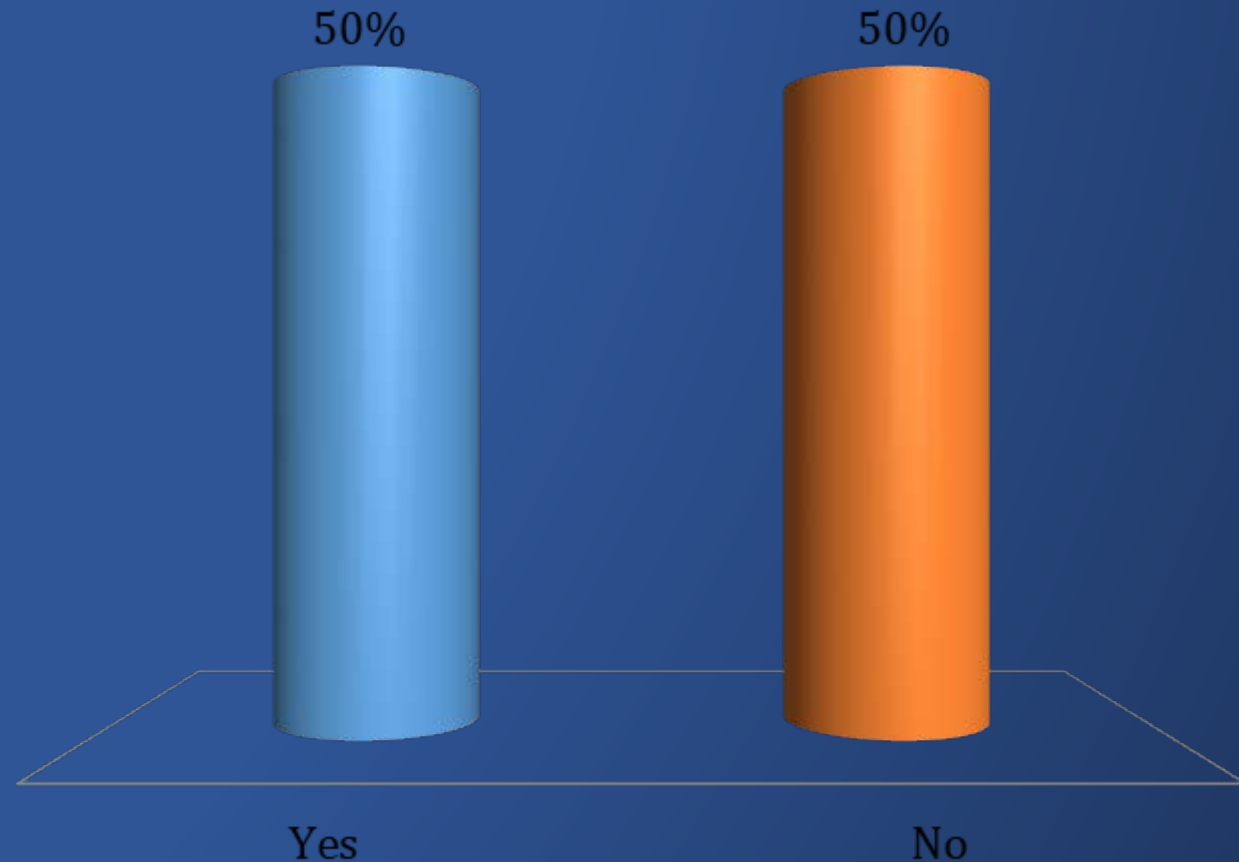
## §2D1.1, App. Note 8

- 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?

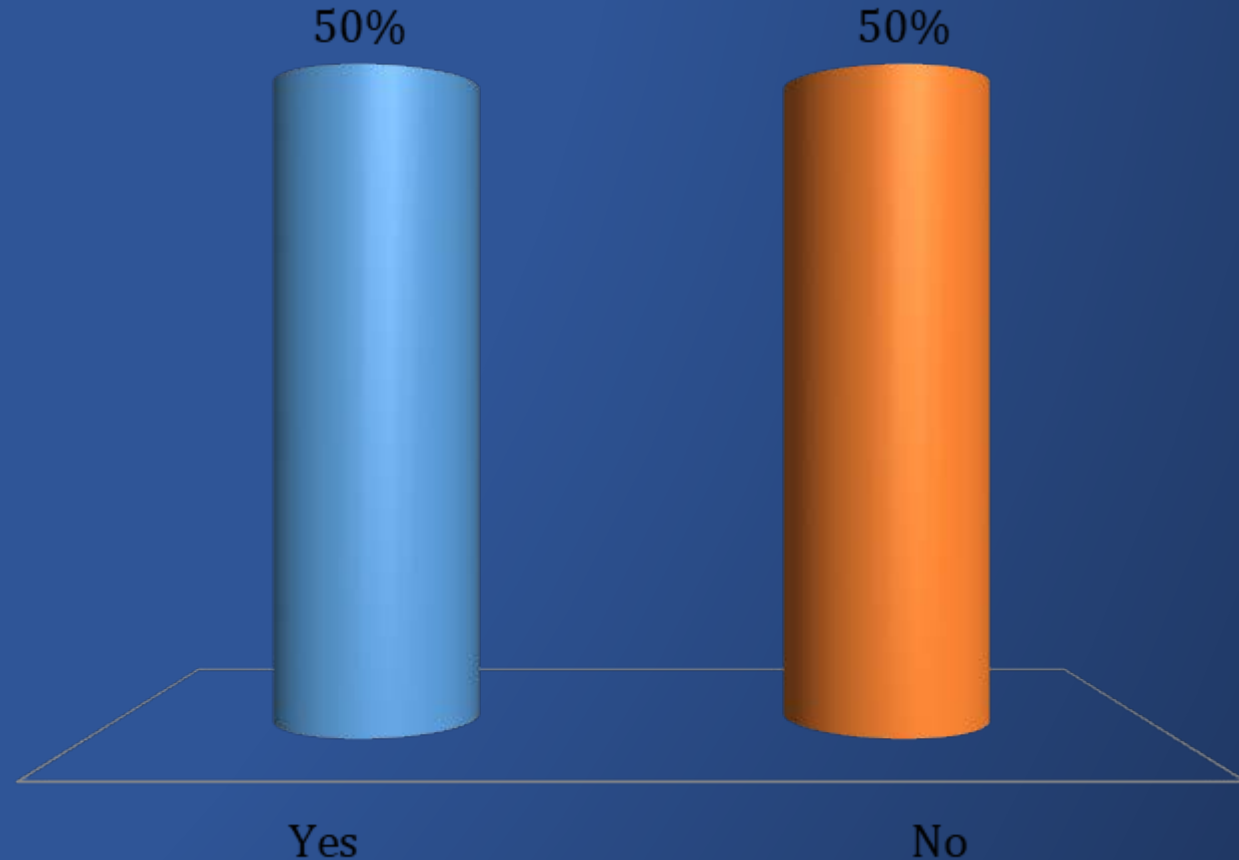
- A. Yes
- B. No



Scenario #8: Does the SOC for possession of a dangerous weapon at §2D1.1(b)(1) apply?

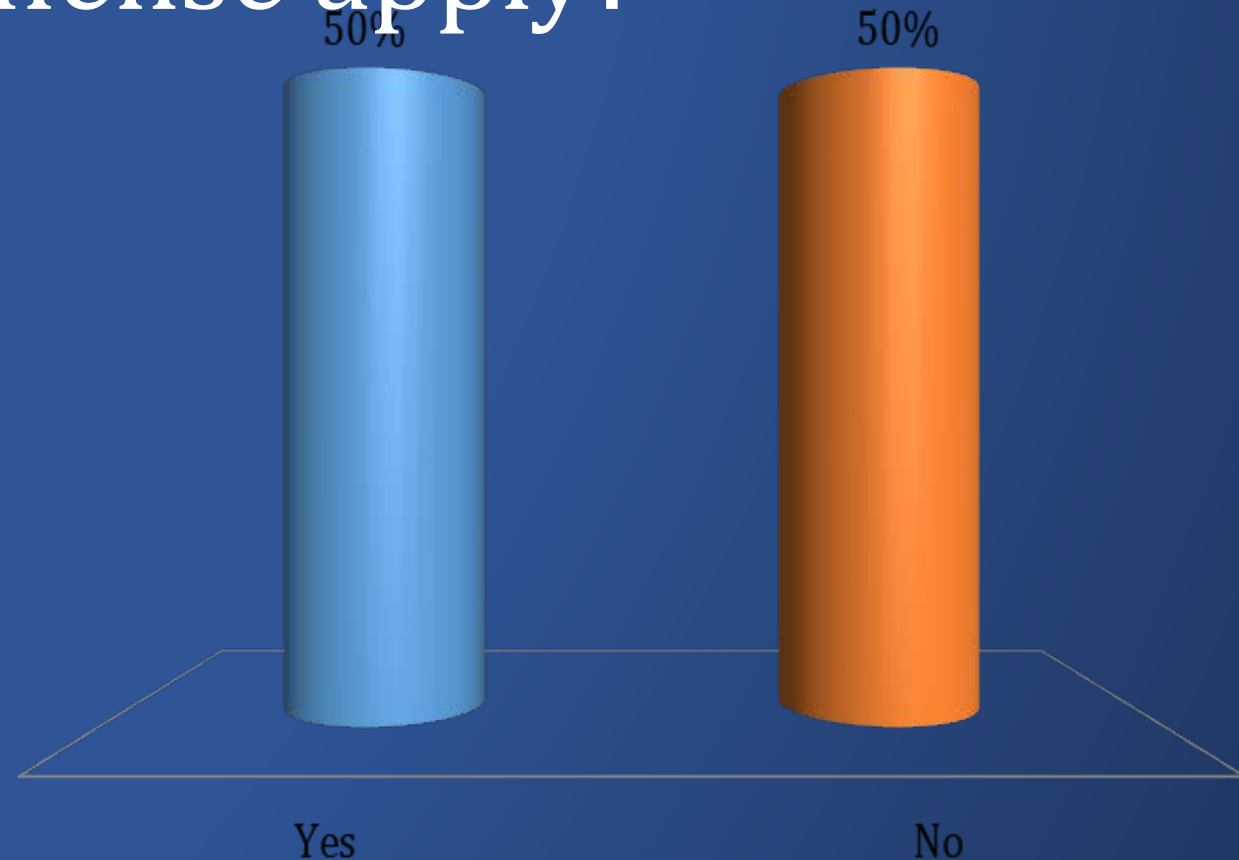
A. Yes

B. No



Scenario #8: Does the SOC at §2K2.1 for use/possession of a firearm in connection with another felony offense apply?

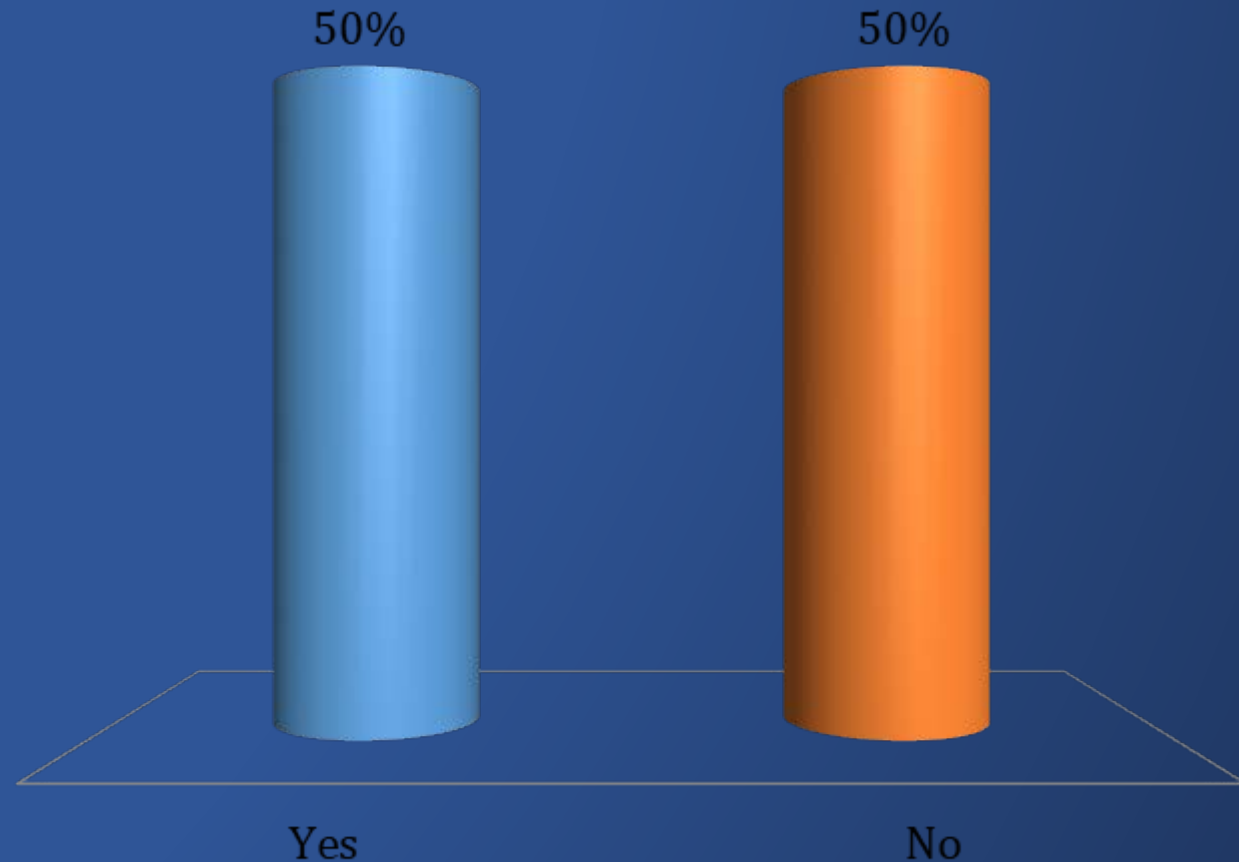
- A. Yes
- B. No



# Scenario#8: Does the SOC for number of firearms at §2K2.1 apply?

A. Yes

B. No



# Impact of § 924(c) on SOC's

§2K2.4, App. Note 4

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

