



Commission Update

Middle District of Pennsylvania Defense

March 25, 2025

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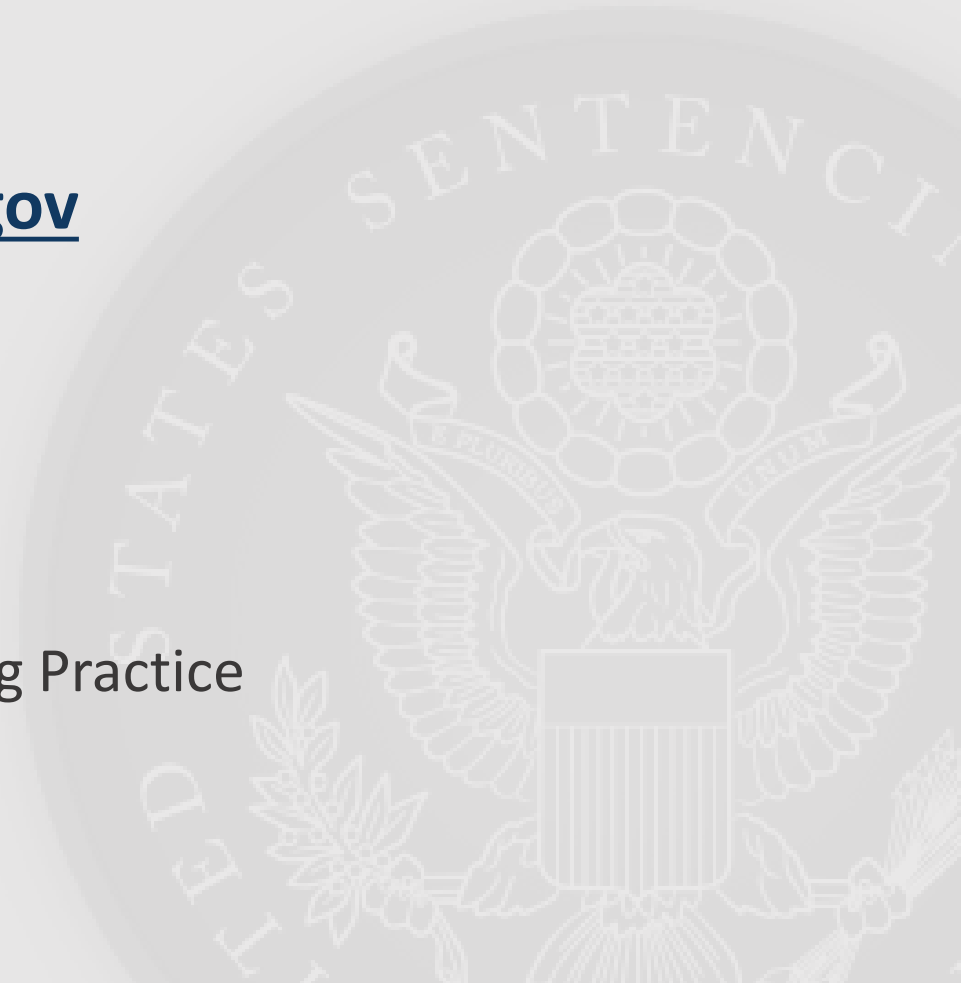
Ross Thomas

Deputy Director

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Office of Education and Sentencing Practice

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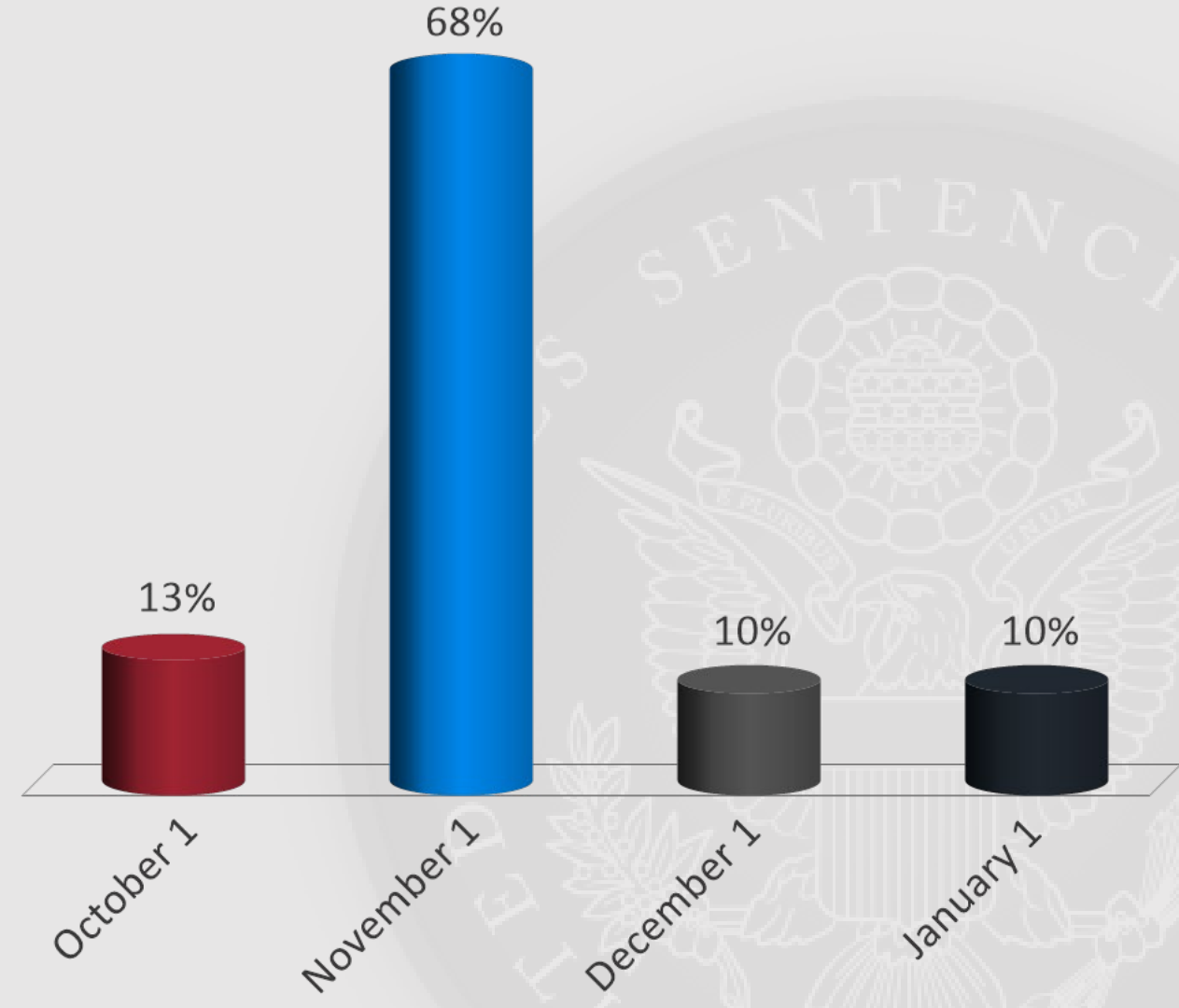
“MDPA”

Join Session



When do the Sentencing Commission's Amendments Become Effective?

- A. October 1
- ✓ B. November 1
- C. December 1
- D. January 1



Amendment Cycle



Today's Topics

2024 Amendments

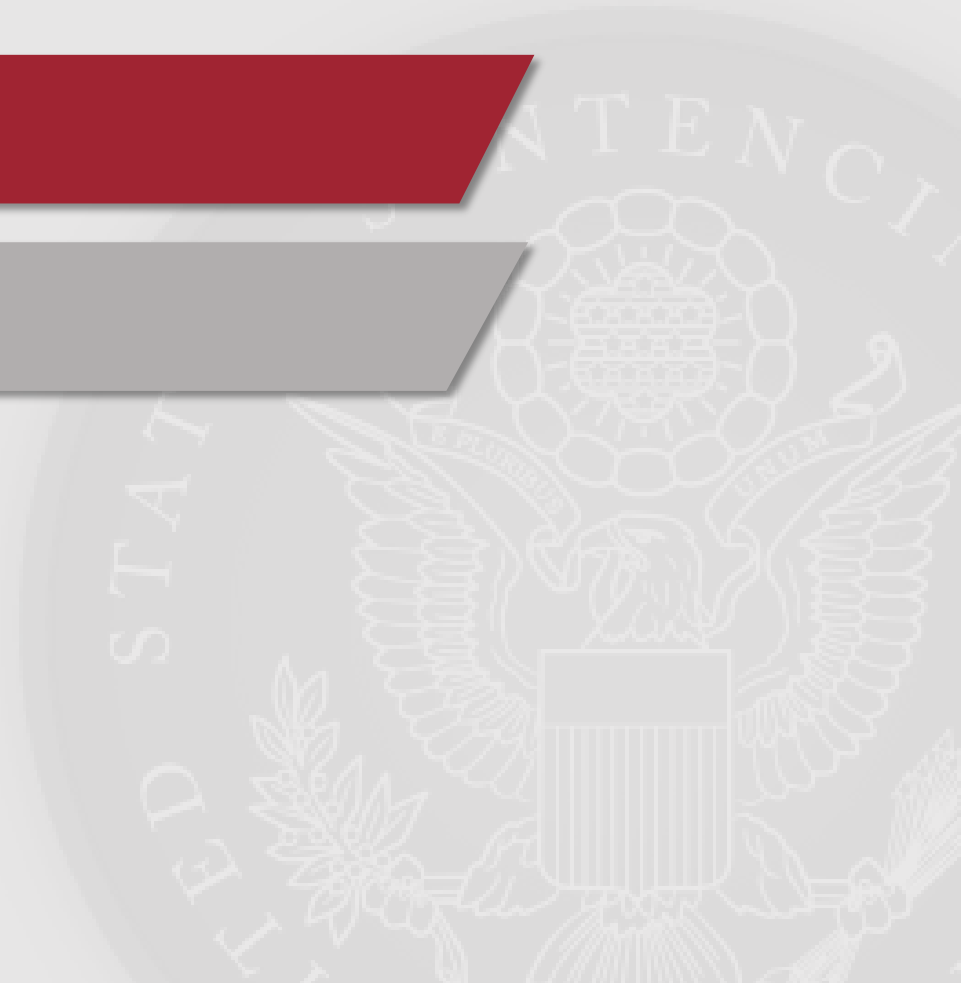
2025 Proposed Amendments



Today's Topics

2024 Amendments

2025 Proposed Amendments



2024 Amendments

Acquitted Conduct

Intended Loss

Circuit Conflicts

Youthful Individuals

Miscellaneous

Technical Amendments

2024 Amendments

Acquitted Conduct

Intended Loss

Circuit Conflicts

Youthful Individuals

Miscellaneous

Technical Amendments

Acquitted Conduct

Section 1B1.3(c)

Relevant Conduct



Federal Acquittals

Acquitted Conduct

Section 1B1.3(c)



Judges are in the best position to decide cases with conduct underlying both . . .

conviction

&

acquittal

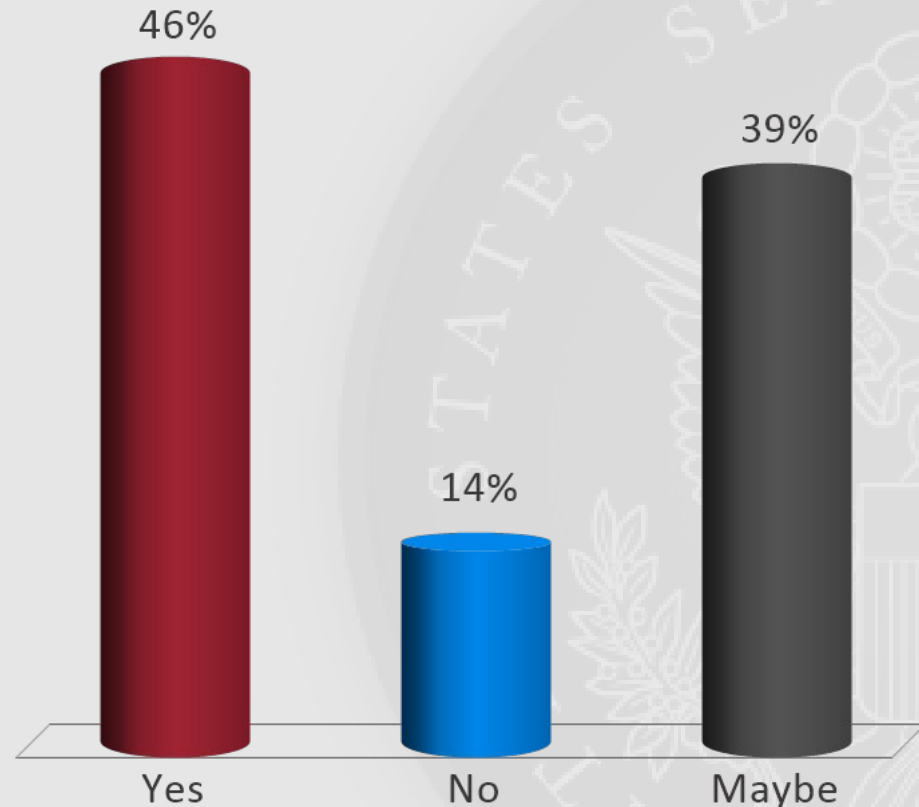
Edmond Burkholter is convicted of Felon in Possession of a Firearm, in violation of 18 U.S.C. § 922(g). Before his federal conviction, Mr. Burkholter was charged and acquitted in state court of a murder involving the same firearm.

Does the §2K2.1(c) cross reference to a homicide guideline apply?

A. Yes

B. No

✓ C. Maybe



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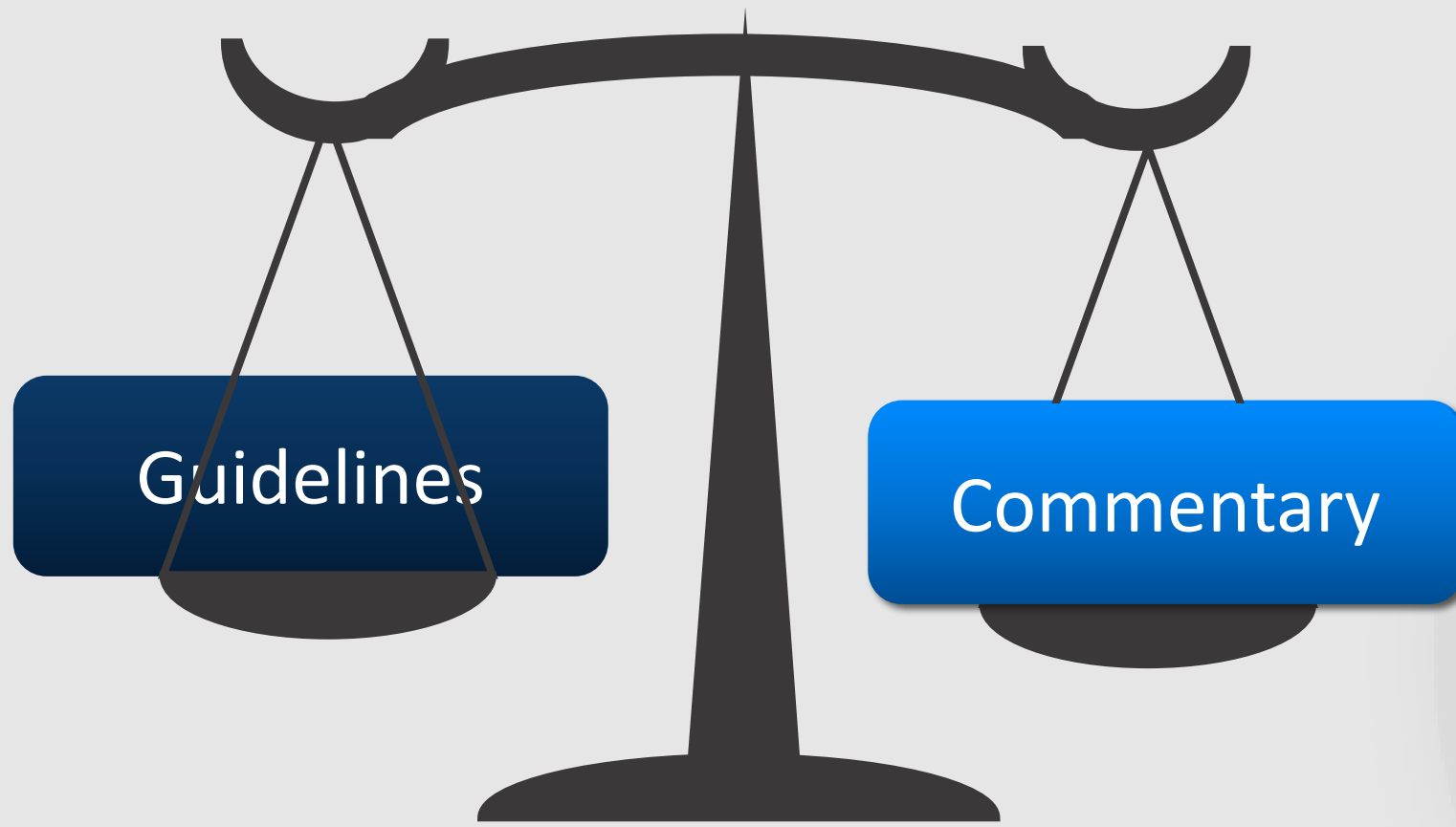
Circuit Conflicts

Youthful Individuals

Miscellaneous

Technical Amendments

Guidelines Commentary

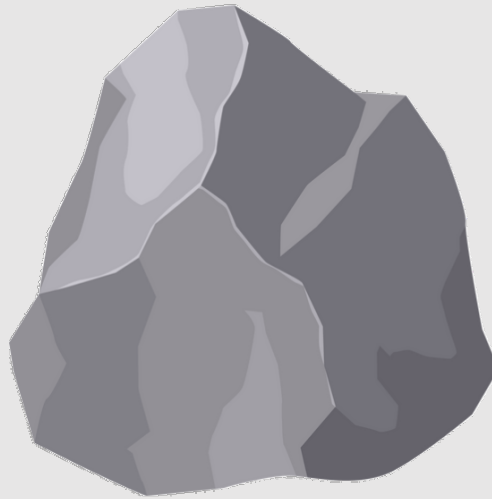


Stinson v. United States

508 U.S. 36 (1993)

Commentary

Use unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous.



Seminole Rock Deference



Analogy Is Not Precise

Kisor v. Wilkie

139 S. Ct. 2400 (2019)



Seminole Rock Defence



Kisor Framework

Deference to Agency's Interpretation of Its Rules



Kisor Framework

Genuine Ambiguity



Zone of Reasonableness



**Character & Context of Agency
Interpretation**

Circuit Split: Deference to Guidelines Commentary

***Kisor* (Less Deferential)**

United States v. Nasir, 17 F.4th 459 (3d Cir. 2021) (en banc)

United States v. Riccardi, 989 F.3d 476 (6th Cir. 2021)

United States v. Castillo, 69 F.4th 648 (9th Cir. 2023)

United States v. Dupree, 57 F.4th 1269 (11th Cir. 2022) (en banc)

***Stinson* (More Deferential)**

United States v. Rainford, 110 F.4th 455 (2d Cir. 2024)

United States v. Vargas, 74 F.4th 673 (5th Cir. 2023) (en banc)

United States v. White, 97 F.4th 532 (7th Cir. 2024)

United States v. Maloid, 71 F.4th 795 (10th Cir. 2023)

Intra-Circuit Split

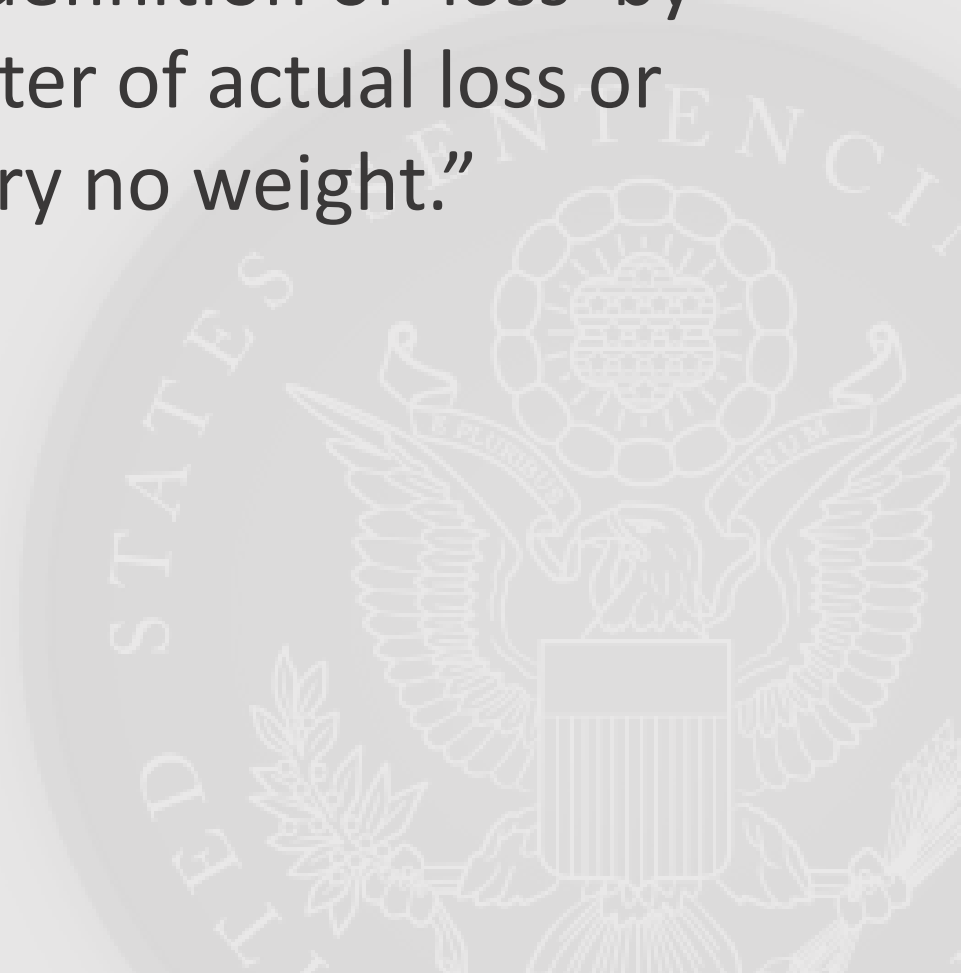
United States v. Campbell, 22 F.4th 438 (4th Cir. 2022)

United States v. Moses, 23 F.4th 347 (4th Cir. 2022)

United States v. Banks

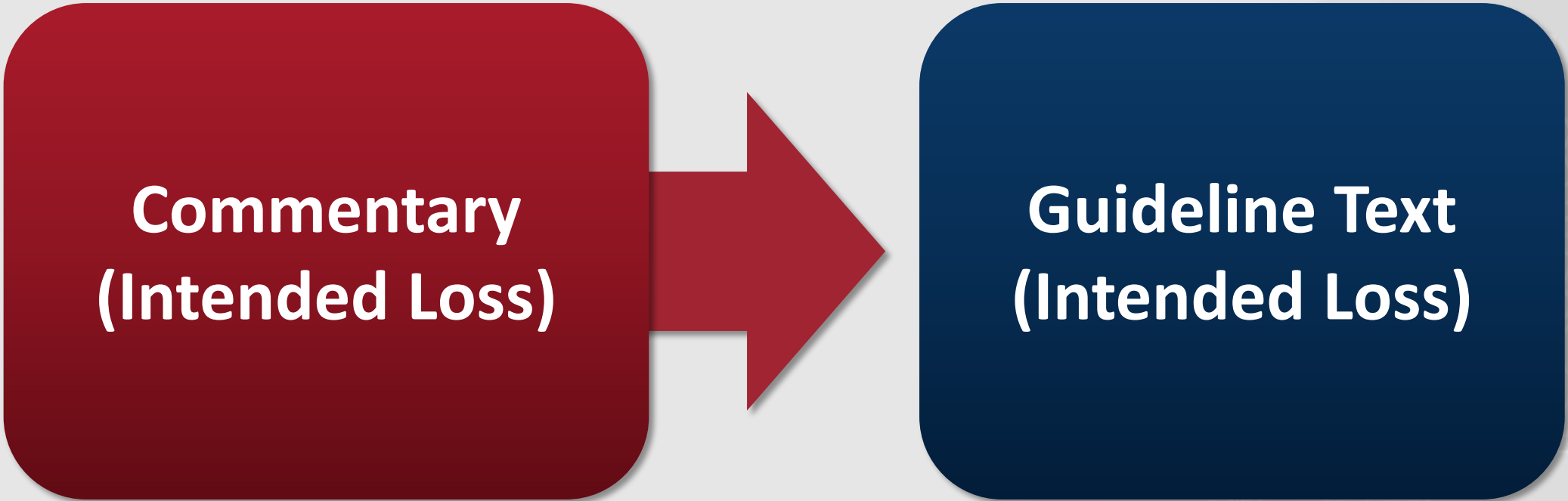
55 F.4th 246 (3d Cir. 2022)

“Because the commentary expands the definition of ‘loss’ by explaining that generally ‘loss is the greater of actual loss or intended loss,’ we accord the commentary no weight.”



Intended Loss

Section 2B1.1(b)(1), Notes to Table



```
graph LR; A[Commentary (Intended Loss)] --> B[Guideline Text (Intended Loss)]
```

**Commentary
(Intended Loss)**

**Guideline Text
(Intended Loss)**

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Circuit Conflicts

Part

A

Altered or Obliterated Serial Numbers (§2K2.1(b)(4))

Part

B

Section 924(c) Grouping (§2K2.4, App. Note 4)

Circuit Conflicts

Part

A

Altered or Obliterated Serial Numbers (§2K2.1(b)(4))

Part

B

Section 924(c) Grouping (§2K2.4, App. Note 4)

Altered or Obliterated Serial Numbers

Section 2K2.1(b)(4)(i)



If any firearm had an altered or obliterated serial number

altered

?

Circuit Split: Altered Serial Number

Naked Eye Test



United States v. St. Hilaire, 960 F.3d 61 (2d Cir. 2020)

United States v. Sands, 948 F.3d 709 (6th Cir. 2020)

Less Legible



United States v. Harris, 720 F.3d 499 (4th Cir. 2013)

United States v. Perez, 585 F.3d 880 (5th Cir. 2009)

United States v. Millender, 791 F. App'x 782 (11th Cir. 2019)

Altered or Obliterated Serial Numbers

Section 2K2.1(b)(4)(i)



4

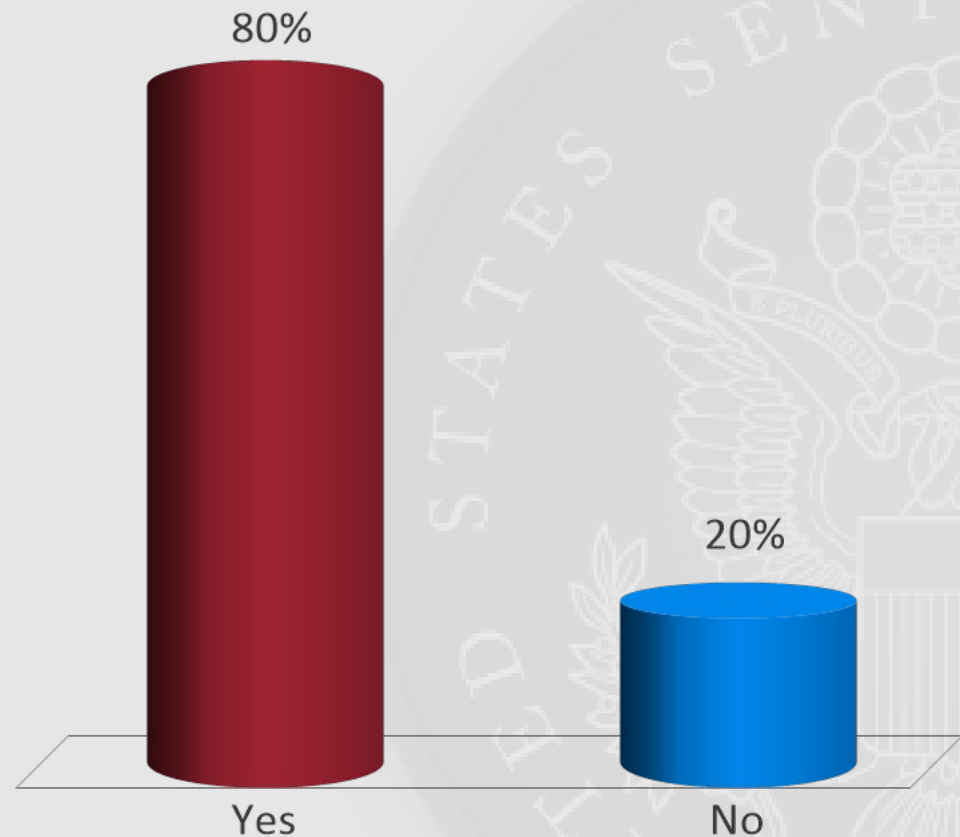
Levels

If any firearm had a serial number that was modified such that the original information is rendered illegible or **unrecognizable to the unaided eye**.

Raymond Reddington was convicted of felon in possession of a firearm. The firearm in question had a legible serial number of XBN111. The serial number was later found to have been modified from its original number of X3N111.

Does the 4-level increase for an illegible or unrecognizable serial number apply?

- ✓ **A. Yes**
- B. No**



Circuit Conflicts

Part

A

Altered or Obliterated Serial Numbers (§2K2.1(b)(4))

Part

B

Section 924(c) Grouping (§2K2.4, App. Note 4)

Circuit Conflicts

Part

A

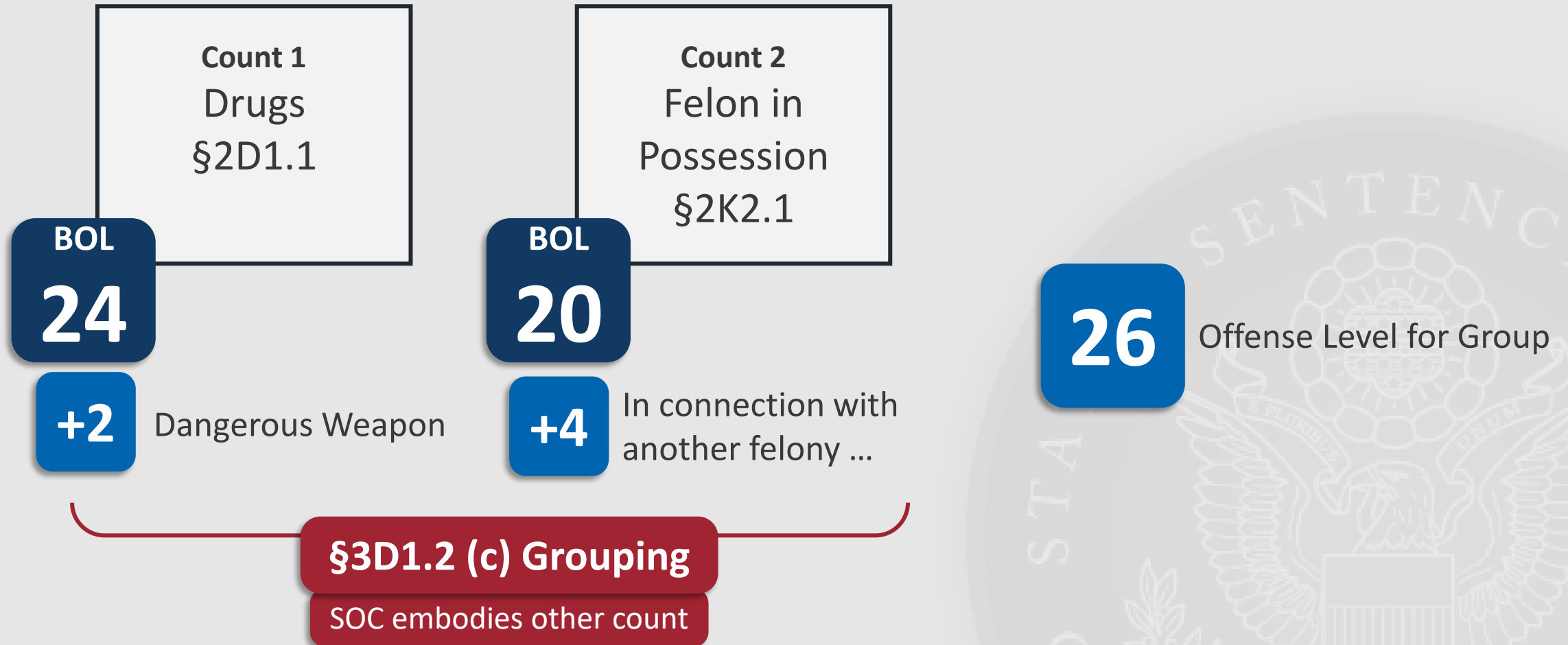
Altered or Obliterated Serial Numbers (§2K2.1(b)(4))

Part

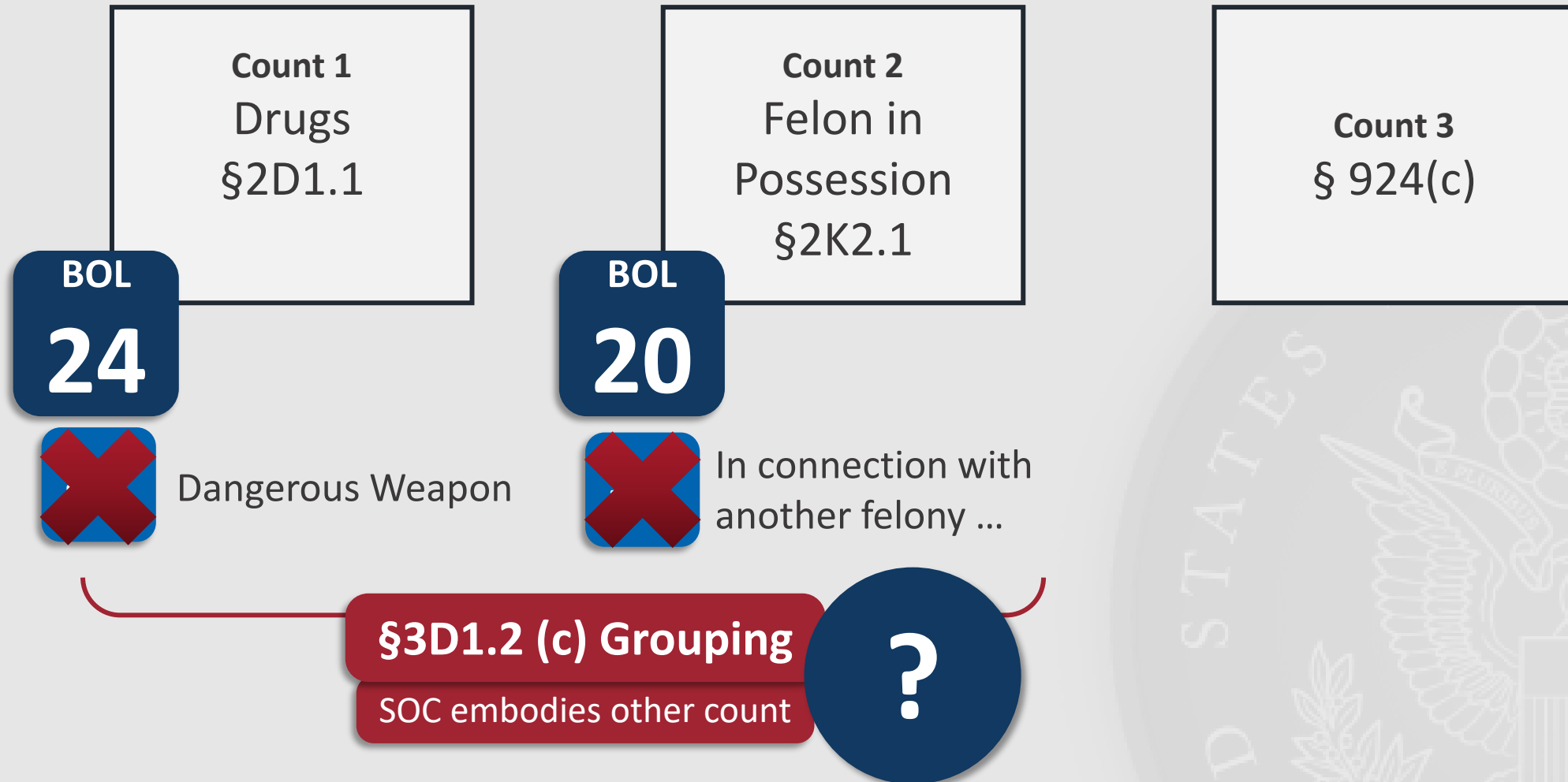
B

Section 924(c) Grouping (§2K2.4, App. Note 4)

Grouping of Drug and Gun Offenses



Grouping of Drug and Gun Offenses



Circuit Split: Impact of 924(c) on Grouping

Group Drugs and Guns



United States v. Gibbs, 395 F. App'x 248 (6th Cir. 2010)

United States v. Bell, 477 F.3d 607 (8th Cir. 2007)

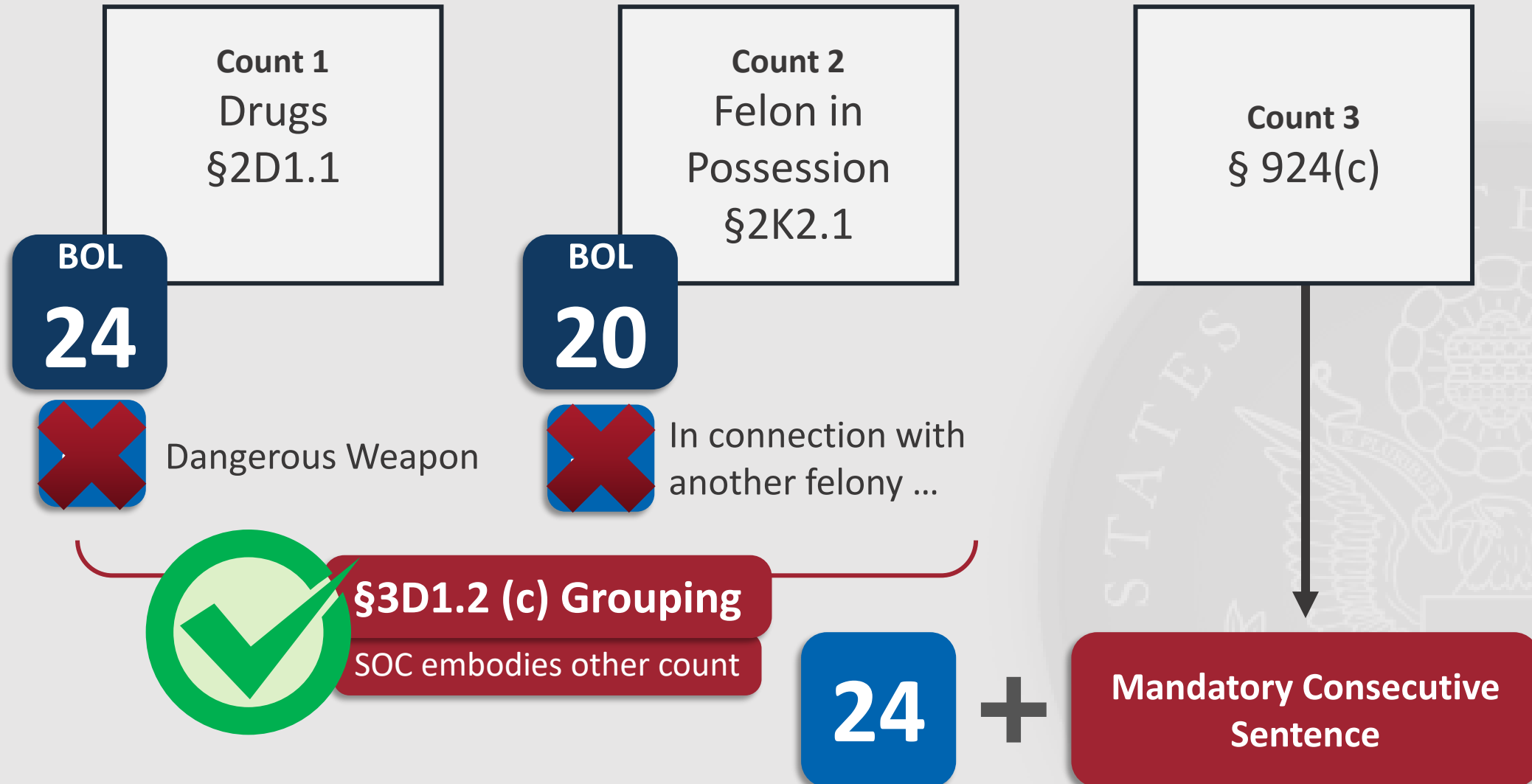
United States v. King, 201 F. App'x 715 (11th Cir. 2006)

Don't Group Drugs and Guns



United States v. Sinclair, 770 F.3d 1148 (7th Cir. 2014)

Grouping of Drug and Gun Offenses



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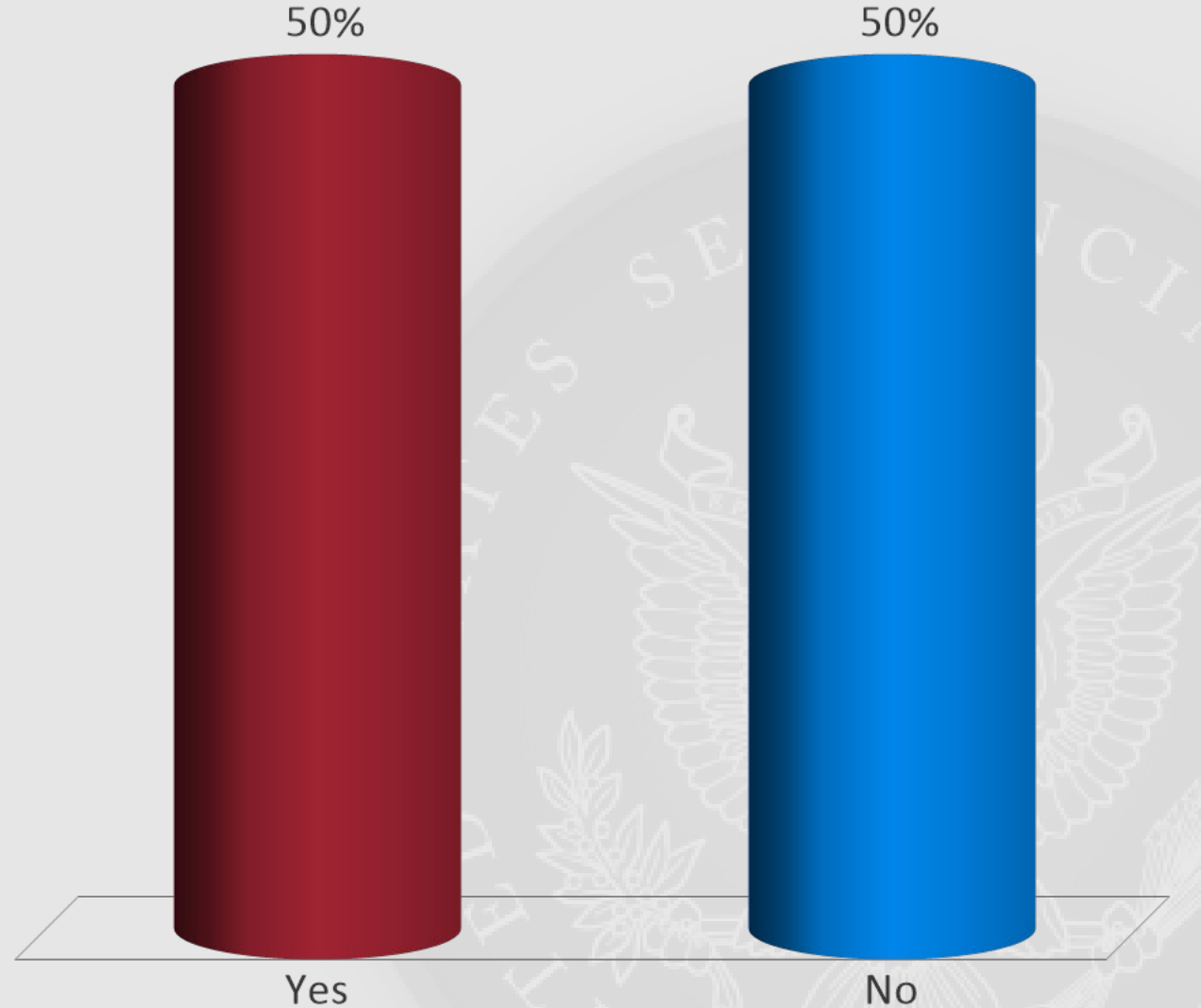
Miscellaneous

Technical Amendments

Have you made a downward departure argument based on a client's youth?

A. Yes

B. No



General Change to Age Policy Statement

Section 5H1.1

Section 5H1.1 **more broadly** provides that age may be relevant for departures.

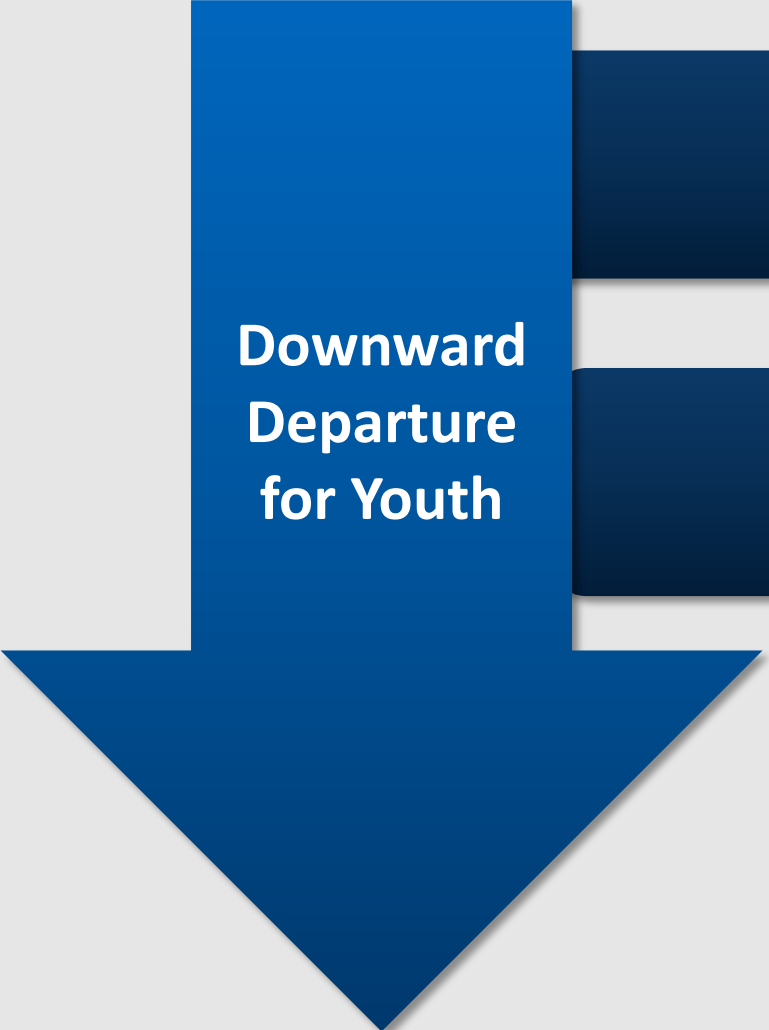


More Broadly



Downward Departure for Youth

Section 5H1.1



Downward
Departure
for Youth

Time of Instant Offense

or

Time of Prior Offenses

Information on Youth

Section 5H1.1

- Risk-Seeking
- Impulsive
- Susceptible to Outside Influence

Risk Factors for
Individual Youth

Age-Crime
Curve

Amenable to
Rehabilitation

Individualized Promotion of Crime Desistance

Section 5H1.1

Age-Appropriate Interventions

Non-Incarceration in Appropriate Cases

Individualized Promotion of Crime Desistance

Section 5H1.1

**Age-Appropriate
Interventions**

Protective Factors

Non-Incarceration

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2024 Amendments

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Circuit Conflicts

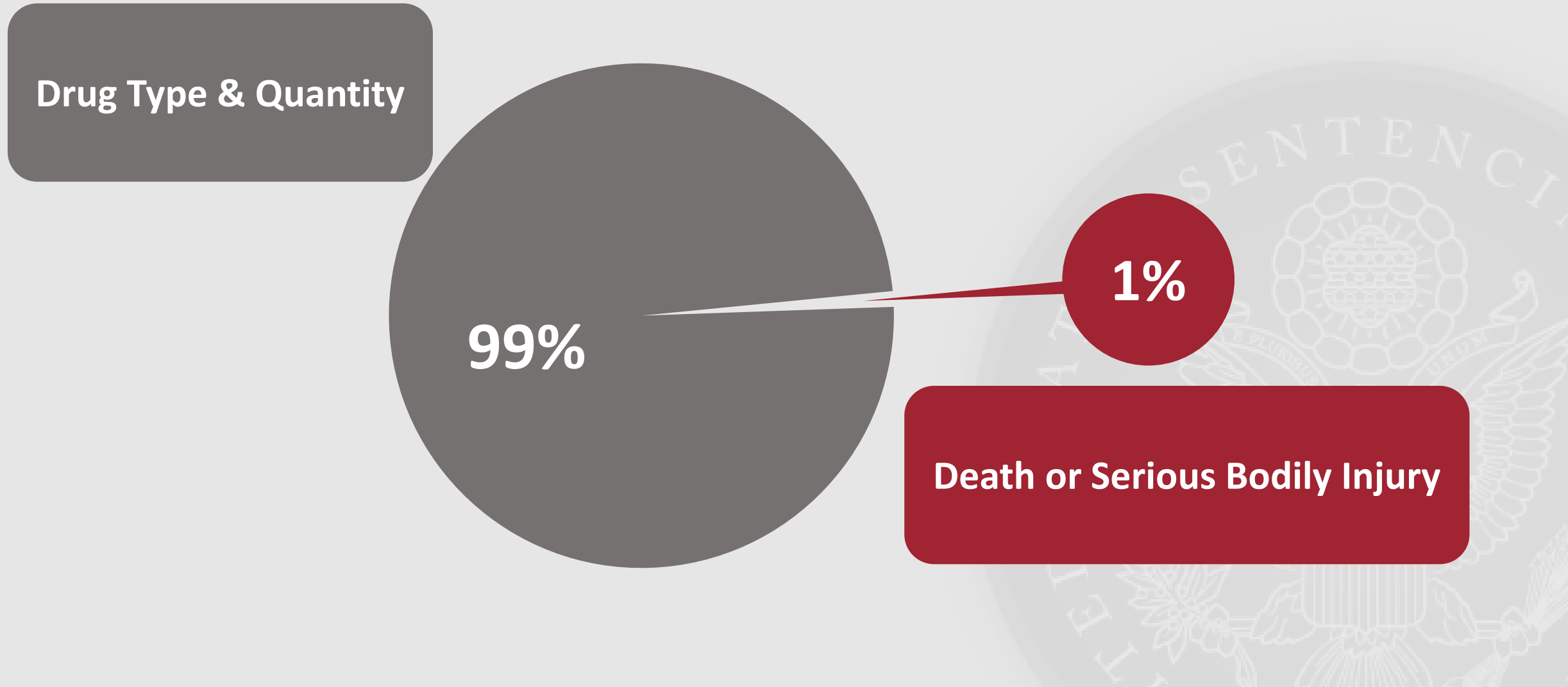
Youthful Individuals

Miscellaneous

Technical Amendments

Drug Trafficking: Base Offense Levels

Two Calculation Methods



Death or Serious Bodily Injury

Offense of Conviction or Relevant Conduct?

Death or Serious Bodily Injury

Offense of Conviction



or

Relevant Conduct



Death or Serious Bodily Injury

Which Alternative Offense Level Applies?

Death or Serious Bodily Injury

Offense of Conviction



43

Statutory Minimum: Life

38

Statutory Minimum: 20 Years

30

Statutory Maximum: 30 Years

26

Statutory Maximum: 15 Years

Stipulating to Death/SBI Offense Levels

Section 1B1.2



If the offense of conviction does not establish an enhanced Base Offense Level . . .



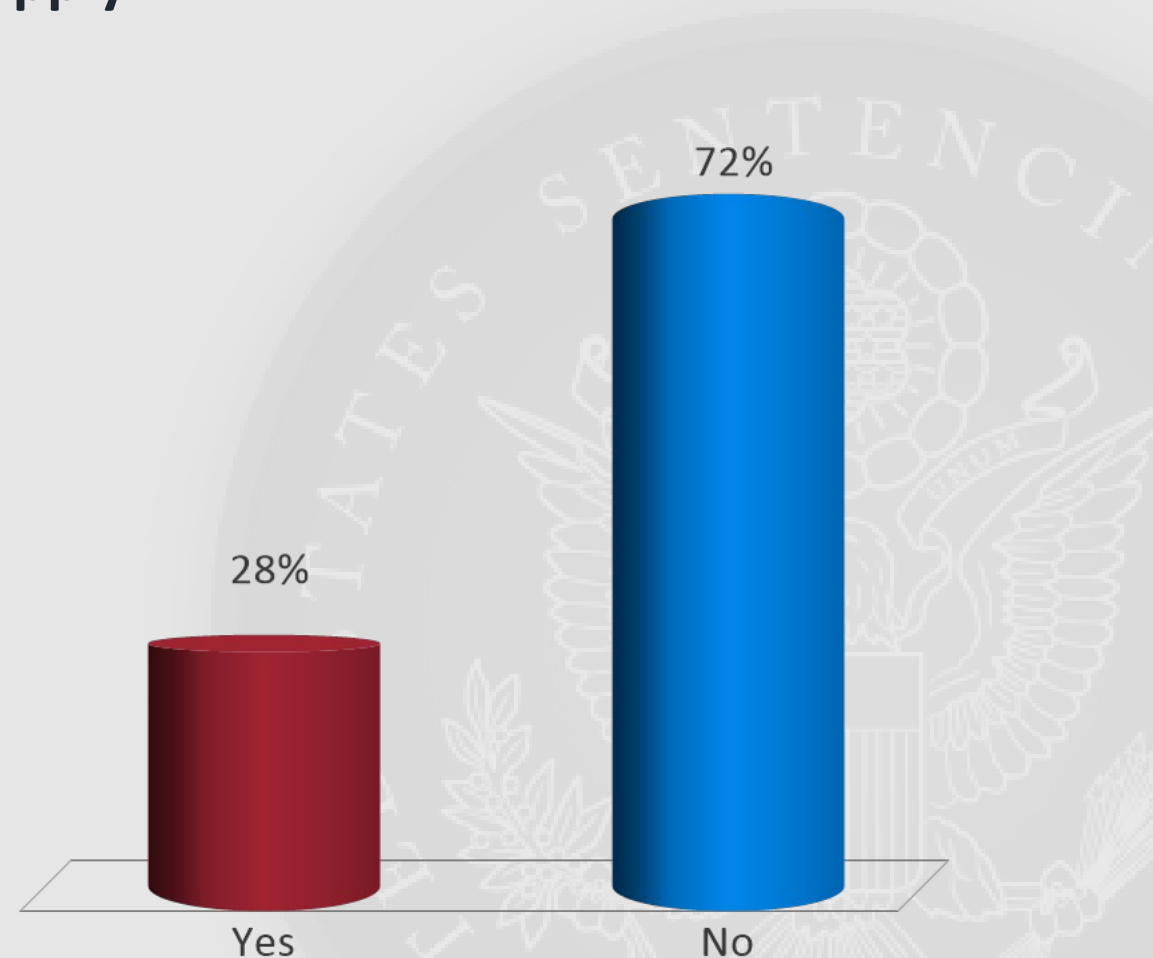
. . . the parties can **stipulate** to the higher base offense levels.

Juan Rolls pleads guilty to one count of fentanyl distribution. The indictment does not allege death or serious bodily injury resulting, and the conviction does not carry a mandatory minimum. Mr. Rolls, however, admits in a statement of facts that the fentanyl buyer died as a result of taking the fentanyl sold by Mr. Rolls.

Does the enhanced BOL of 38 at §2D1.1(a)(2) apply?

A. Yes

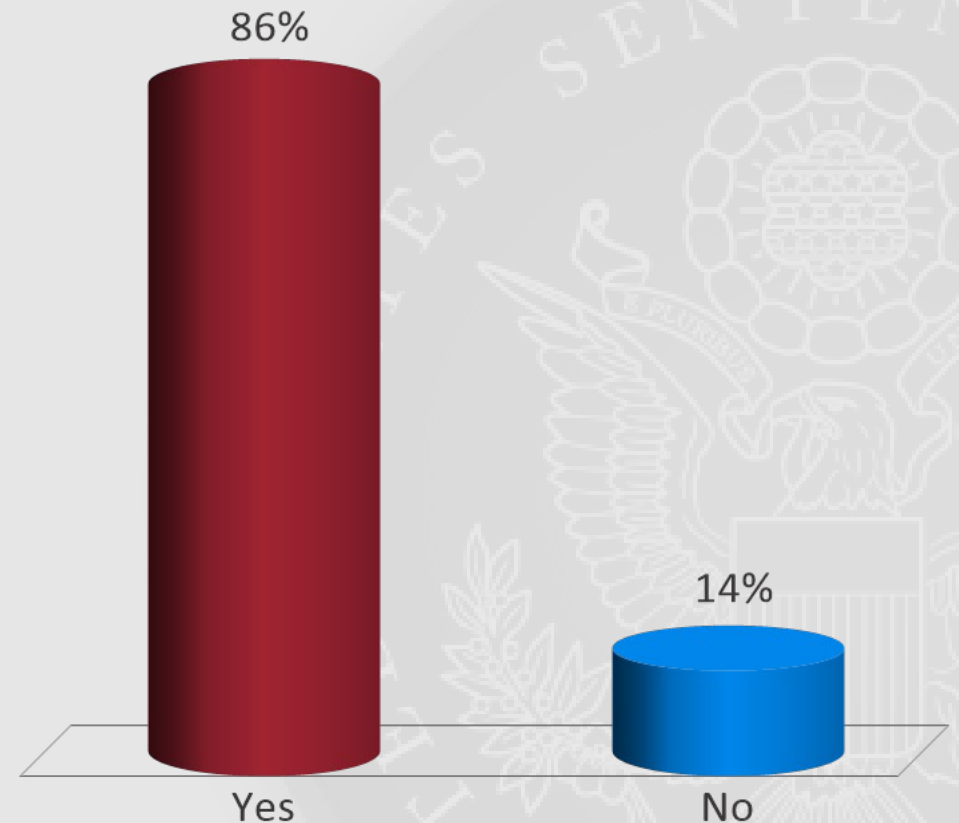
✓ **B. No**



Mr. Rolls's plea agreement also includes the following provision: "The parties stipulate and agree that Mr. Rolls distributed fentanyl to Victim A, resulting in Victim A's fentanyl overdose and death. The parties further stipulate and agree that, pursuant to §1B1.2, Mr. Rolls's sentencing guidelines will be calculated with a Base Offense Level of 38."

Does the enhanced BOL of 38 at §2D1.1(a)(2) apply?

- ✓ **A. Yes**
- B. No**



Adjustment for Certain Zero-Point Offenders

Section 4C1.1

2

Level
Decrease

No Criminal History Points | §4C1.1(a)(1)

AND

No Offense Exclusions | §4C1.1(a)(2)–(11)

Zero-Point Exclusions

Prior §4C1.1(a)(2)–(10)

Terrorism Adjustment (§3A1.4)

Violence

Death or Serious Bodily Injury

Sex Offenses

Substantial Financial Hardship

Firearms

Individual Rights Offenses

Vulnerable Victim & Hate Crimes

Aggravating Role & CCE

Zero-Point Exclusions

Prior §4C1.1(a)(2)–(10)

Terrorism Adjustment (§3A1.4)

Violence

Death or Serious Bodily Injury

Sex Offenses

Substantial Financial Hardship

Firearms

Individual Rights Offenses

Vulnerable Victim & Hate Crimes

Aggravating Role & CCE

“Sex Offense” Definition

Prior §4C1.1(b)(2)

Sex Offenses Against Minors

Sexual Abuse (Chapter 109A)

Sexual Exploitation (Chapter 110)

Transportation (Chapter 117)

Sex Trafficking (18 U.S.C. § 1591)

**Includes Attempt or Conspiracy*



“Sex Offense” Definition

Current §4C1.1(b)(2)

Sex Offenses ~~Against Minors~~

Sexual Abuse (Chapter 109A)
Sexual Exploitation (Chapter 110)
Transportation (Chapter 117)
Sex Trafficking (18 U.S.C. § 1591)
**Includes Attempt or Conspiracy*

Sex Offenses

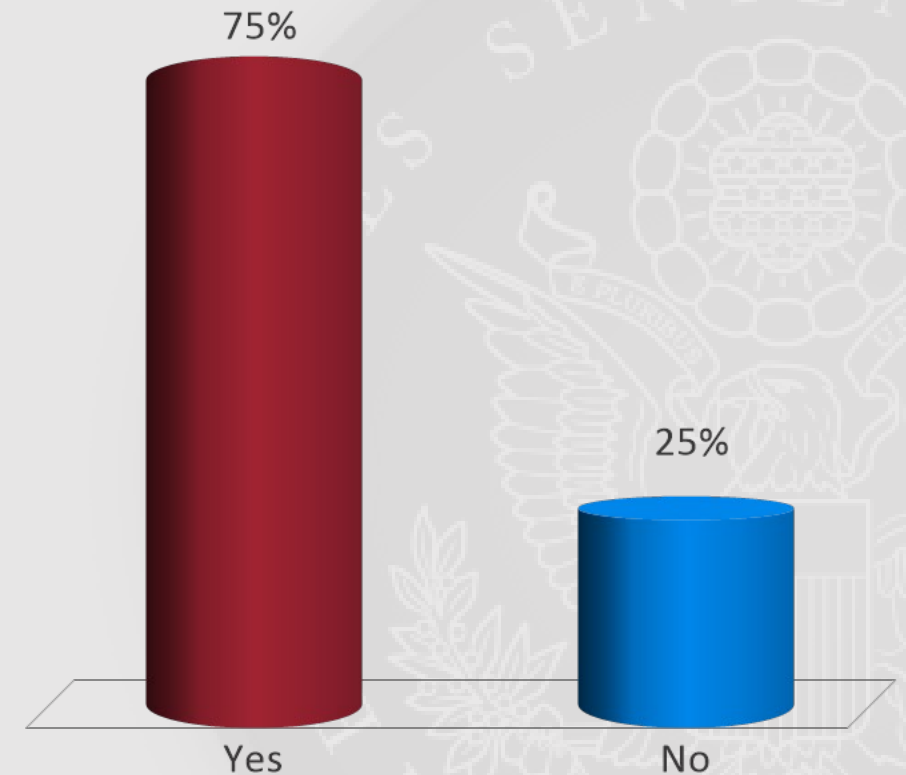
Sexual Abuse (Chapter 109A)
Sexual Exploitation (Chapter 110)
Transportation (Chapter 117)
Sex Trafficking (18 U.S.C. § 1591)
**Includes Attempt or Conspiracy*

David Hummel is convicted of sex trafficking, in violation of 18 U.S.C. § 1591. Specifically, on September 1, 2024, Mr. Hummel transported 20-year-old Victim A, knowingly causing the victim to engage in a commercial sex act by means of coercion. Mr. Hummel has no prior criminal history, and his guideline range would be lower if he received the §4C1.1 adjustment.

If Mr. Hummel is sentenced after November 1, 2024, will Mr. Hummel be excluded from §4C1.1 because he was convicted of a sex offense?

A. Yes

✓ B. No



Ex Post Facto Clause

Section 1B1.11

UNITED STATES SENTENCING COMMISSION
GUIDELINES MANUAL
2023



Use guidelines in effect on date of sentencing
UNLESS . . .



Ex Post Facto Clause violation

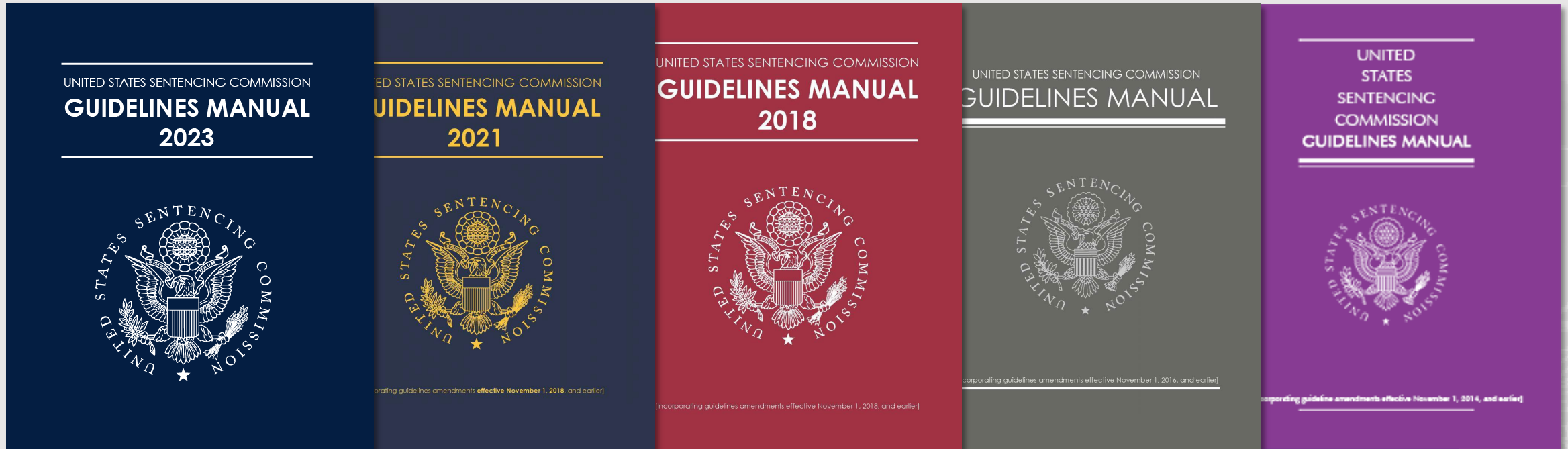
**Offense of conviction
committed before new
guidelines take effect**

AND

**New guidelines are
higher than those at
the time of the offense**

One Book Rule

Section 1B1.11

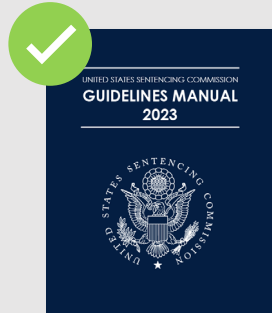


One Book Rule

Ex Post Facto Clause and Relevant Conduct

Section 1B1.11, App. Note 2

Prior Guideline Manual



New Guideline Manual
11/1/2024

Offense of Conviction
9/1/2024



The **last date of the offense of conviction** is the controlling date for ex *post facto* purposes.

This is true even if the defendant's relevant conduct includes an act that occurred after the revised Guidelines Manual took effect.

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Zero-Point Exclusions

Section 4C1.1(a)(2)–(10)

Terrorism Adjustment (§3A1.4)

Violence

Death or Serious Bodily Injury

Sex Offenses Against Minors

Substantial Financial Hardship

Firearms

Individual Rights Offenses

Vulnerable Victim & Hate Crimes

Aggravating Role & CCE

Zero-Point Exclusions

Adopted §4C1.1(a)(10)–(11)

Terrorism Adjustment (§3A1.4)

Violence

Death or Serious Bodily Injury

Sex Offenses Against Minors

Substantial Financial Hardship

Firearms

Individual Rights Offenses

Vulnerable Victim & Hate Crimes

Aggravating Role

& CCE

Today's Topics

2024 Amendments

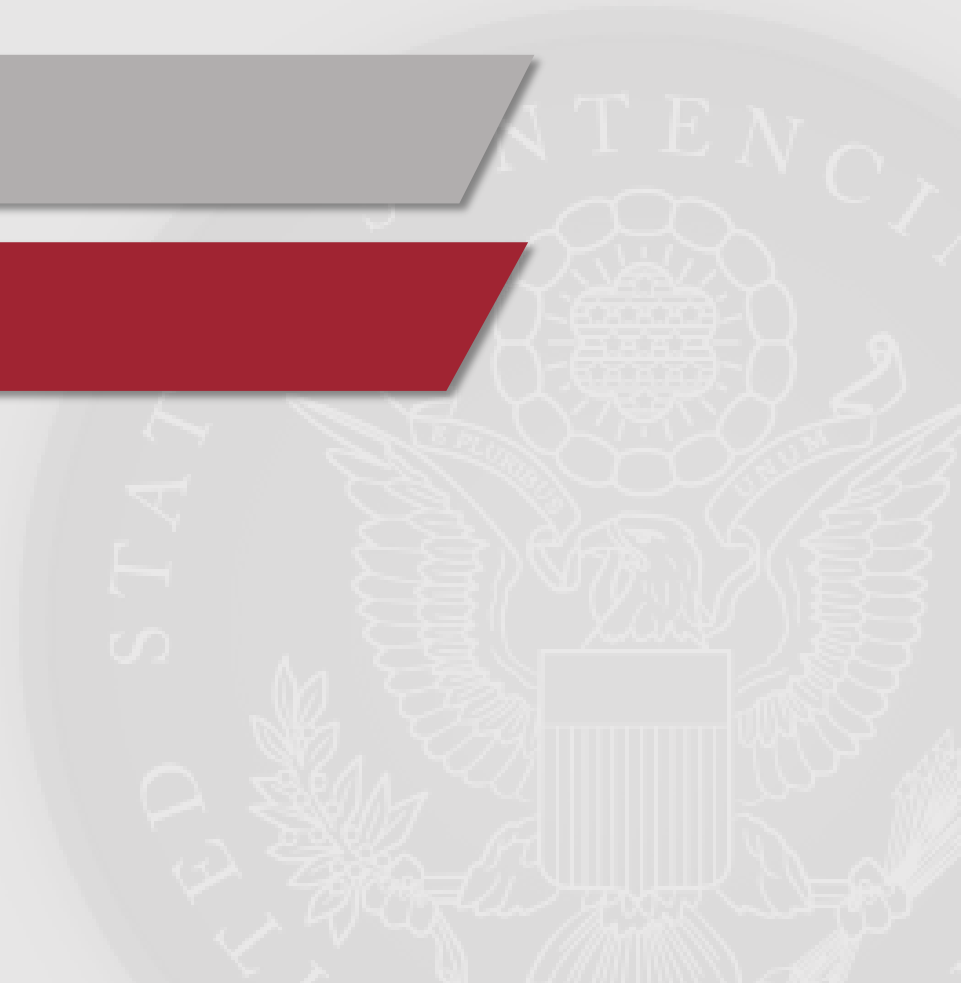
2025 Proposed Amendments



Today's Topics

2024 Amendments

2025 Proposed Amendments



2025 Proposed Amendments

Career Offender

Firearms Offenses

Circuit Conflicts

Simplification

Drug Offenses

Supervised Release

Retroactivity IFC

2025 Proposed Amendments

Career Offender

Firearms Offenses

Circuit Conflicts

Simplification

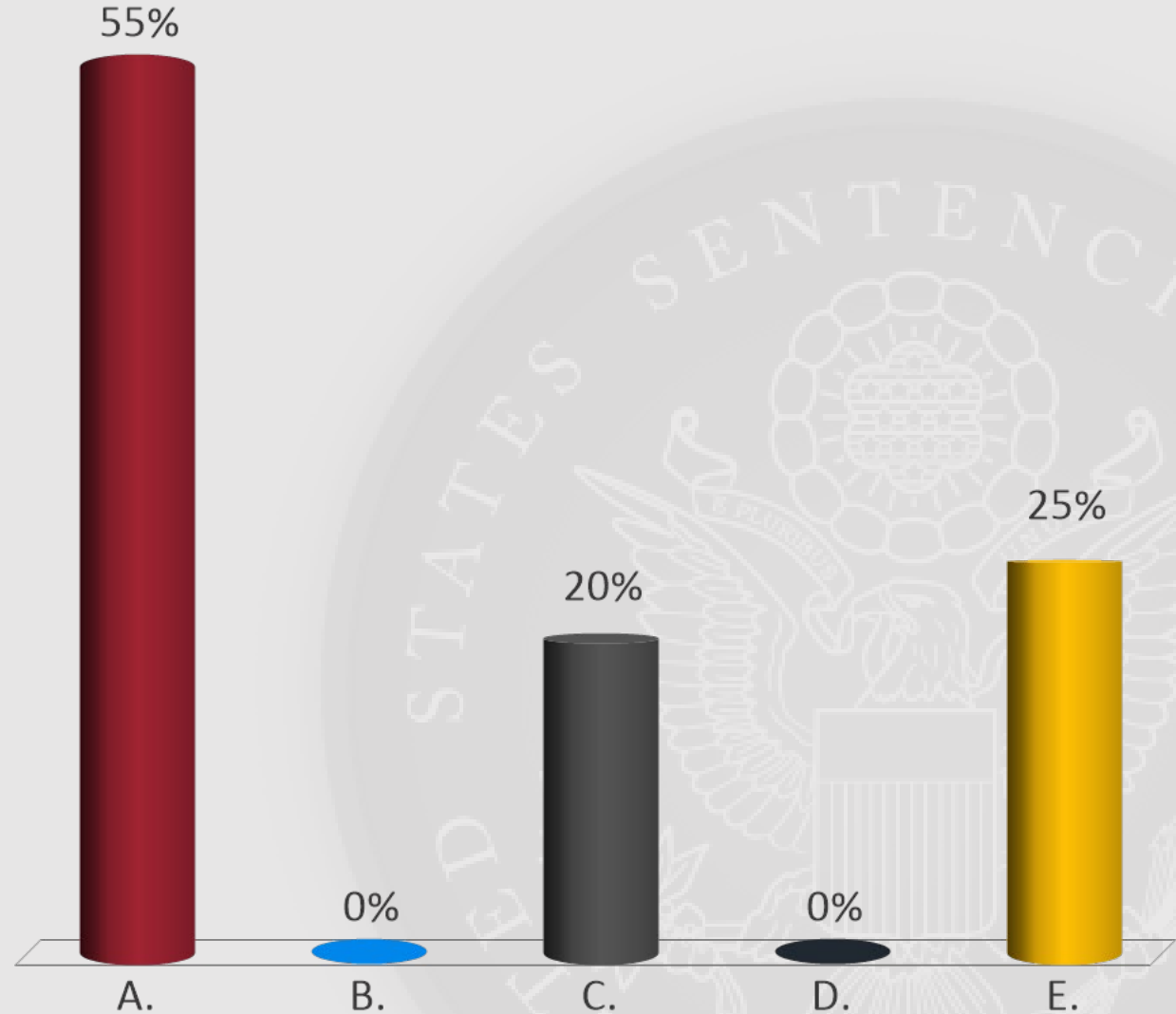
Drug Offenses

Supervised Release

Retroactivity IFC

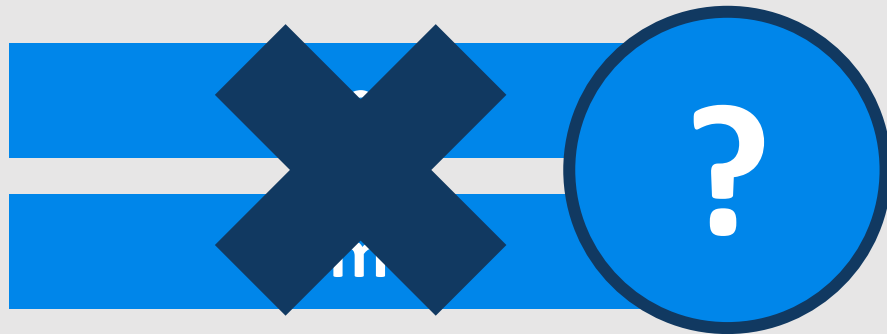
What word would you use to describe the categorical approach?

- A. Confusing
- B. Unfair
- C. Necessary
- D. Easy
- E. I'm rendered speechless



Categorical Approach

A method for determining whether an offense meets a given definition, such as “controlled substance offense” or “crime of violence.”



Career Offender



§4B1.2

Controlled Substance Offense

Crime of Violence

Proposed Amendment on Career Offender

Controlled Substance Offense (§4B1.2(a))

Crime of Violence (§4B1.2(b))

Minimum Sentence Length Requirement

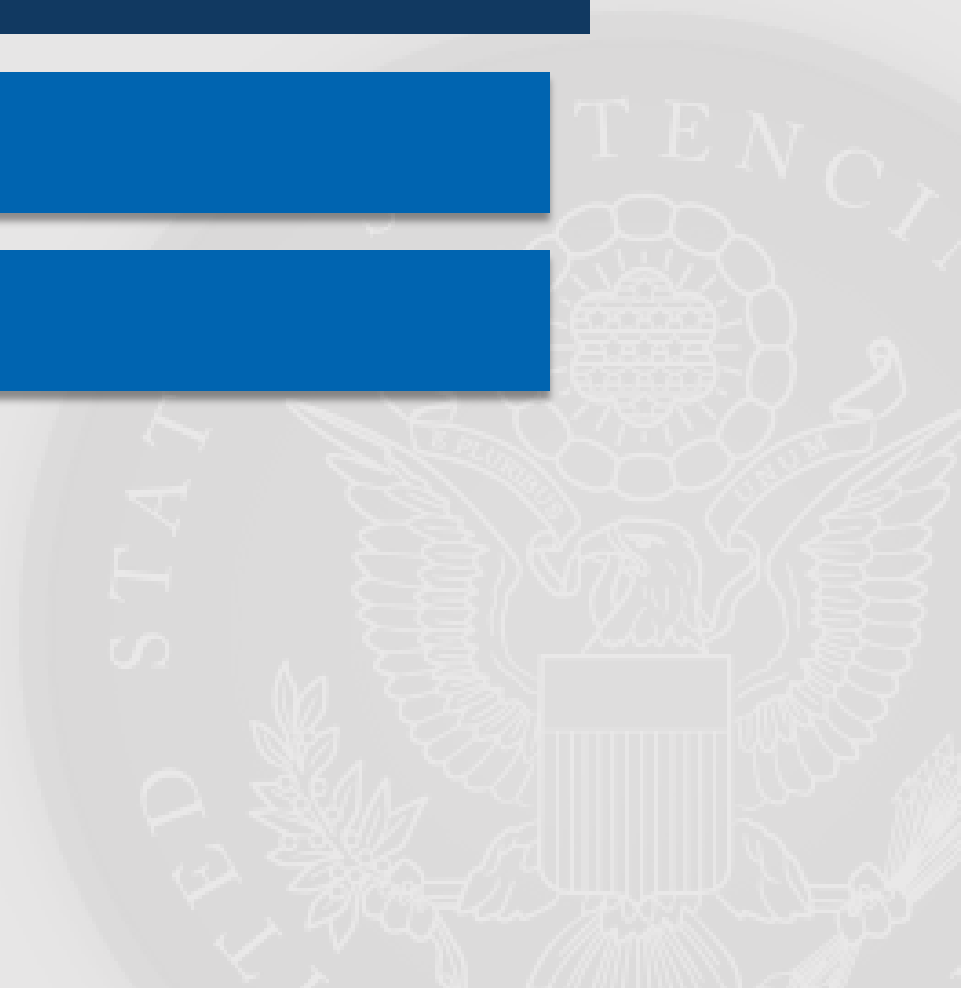
Changes to Other Guidelines

Proposed Amendment on Career Offender

Controlled Substance Offense (§4B1.2(a))

Exclude State Drug Offenses

List Federal Drug Statutes



Proposed Amendment on Career Offender

Controlled Substance Offense (§4B1.2(a))

Crime of Violence (§4B1.2(b))

Minimum Sentence Length Requirement

Changes to Other Guidelines

Proposed Amendment on Career Offender

Crime of Violence (§4B1.2(b))

Conduct-Based Approach

Section 1B1.3(a)(1)(A)

Prima Facie* Showing from *Shepard

Proposed Amendment on Career Offender

Controlled Substance Offense (§4B1.2(a))

Crime of Violence (§4B1.2(b))

Minimum Sentence Length Requirement

Changes to Other Guidelines

Proposed Amendment on Career Offender

Minimum Sentence Length Requirement

Three Options

Suboptions: Both COV and CSO *or* COV Only

Proposed Amendment on Career Offender

Minimum Sentence Length Requirement

Three Options

Option 1

Criminal History Points at §4A1.1

Option 2

Sentence Imposed

Option 3

Sentence Served

Proposed Amendment on Career Offender

Controlled Substance Offense (§4B1.2(a))

Crime of Violence (§4B1.2(b))

Minimum Sentence Length Requirement

Changes to Other Guidelines

Proposed Amendment on Career Offender

Changes to Other Guidelines

Controlled Substance Offense & Crime of Violence

§2K1.3

§2K2.1

§4B1.4

§5K2.17

§7B1.1

Crime of Violence

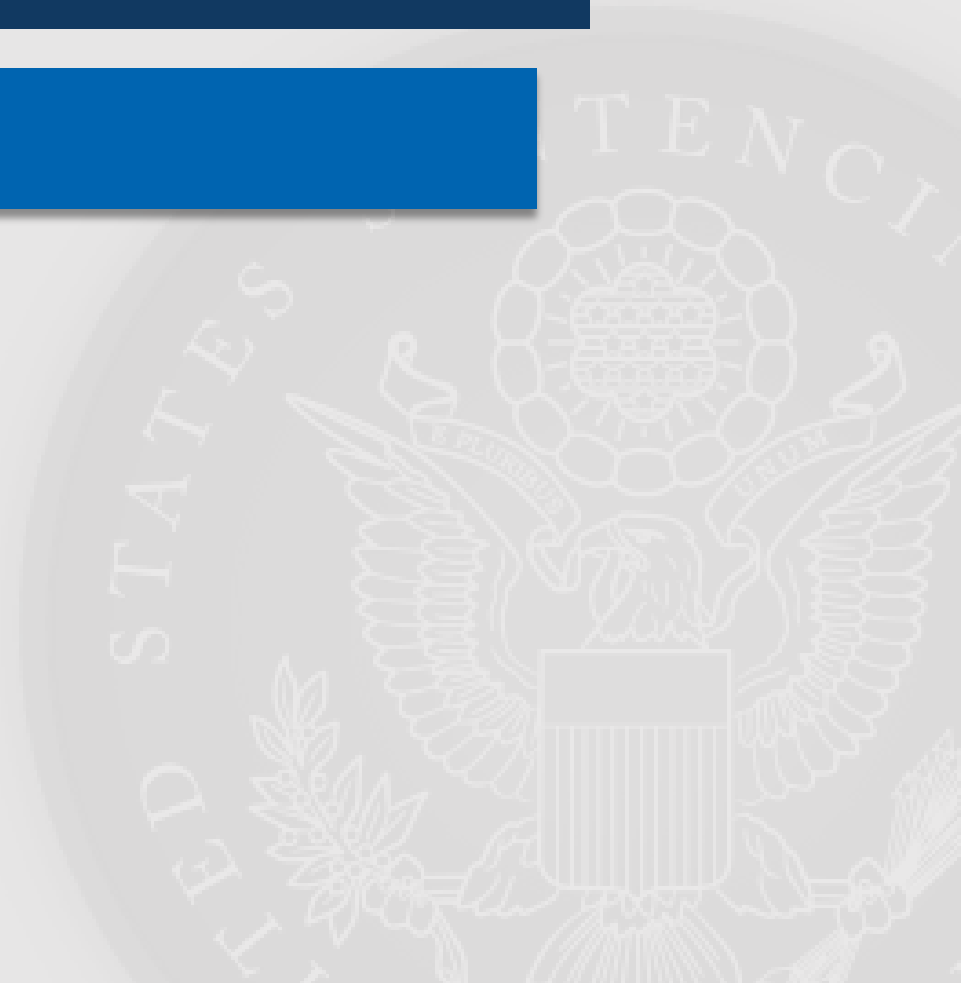
§2S1.1

§4A1.2

Proposed Amendment on Career Offender

Changes to Other Guidelines

Issue for Comment



2025 Proposed Amendments

Career Offender

Firearms Offenses

Circuit Conflicts

Simplification

Drug Offenses

Supervised Release

Retroactivity IFC

2025 Proposed Amendments

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Proposed Amendment on Firearm Offenses

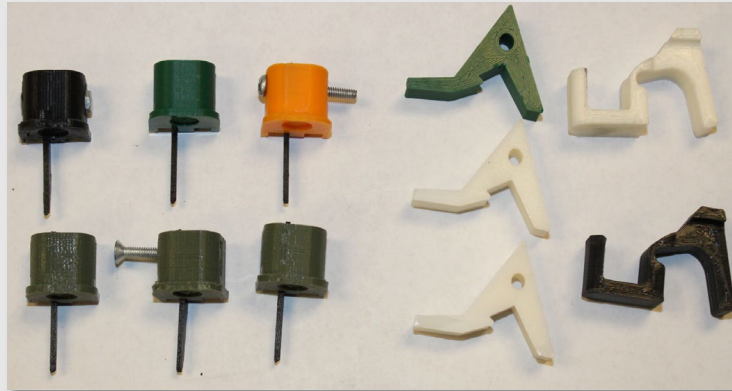
Part A

Machinegun Conversion Devices (MCDs)

Part B

Section 2K2.1(b)(4) – *Mens Rea*

Machinegun Conversion Devices



“Machinegun” Definition

26 U.S.C. § 5845(b)

The term “**machinegun**” also includes:

“any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun”

Firearm Definition

Section 2K2.1(b)(1), App. Note 1

Base Offense Levels

Section 2K2.1(a)(1), (3), (4), (5)

Firearm

26 U.S.C. § 5845(a)

National Firearms Act

***includes MCDs**

SOCs & Cross Reference

Section 2K2.1, App. Note 1

Firearm

18 U.S.C. § 921(a)(3)

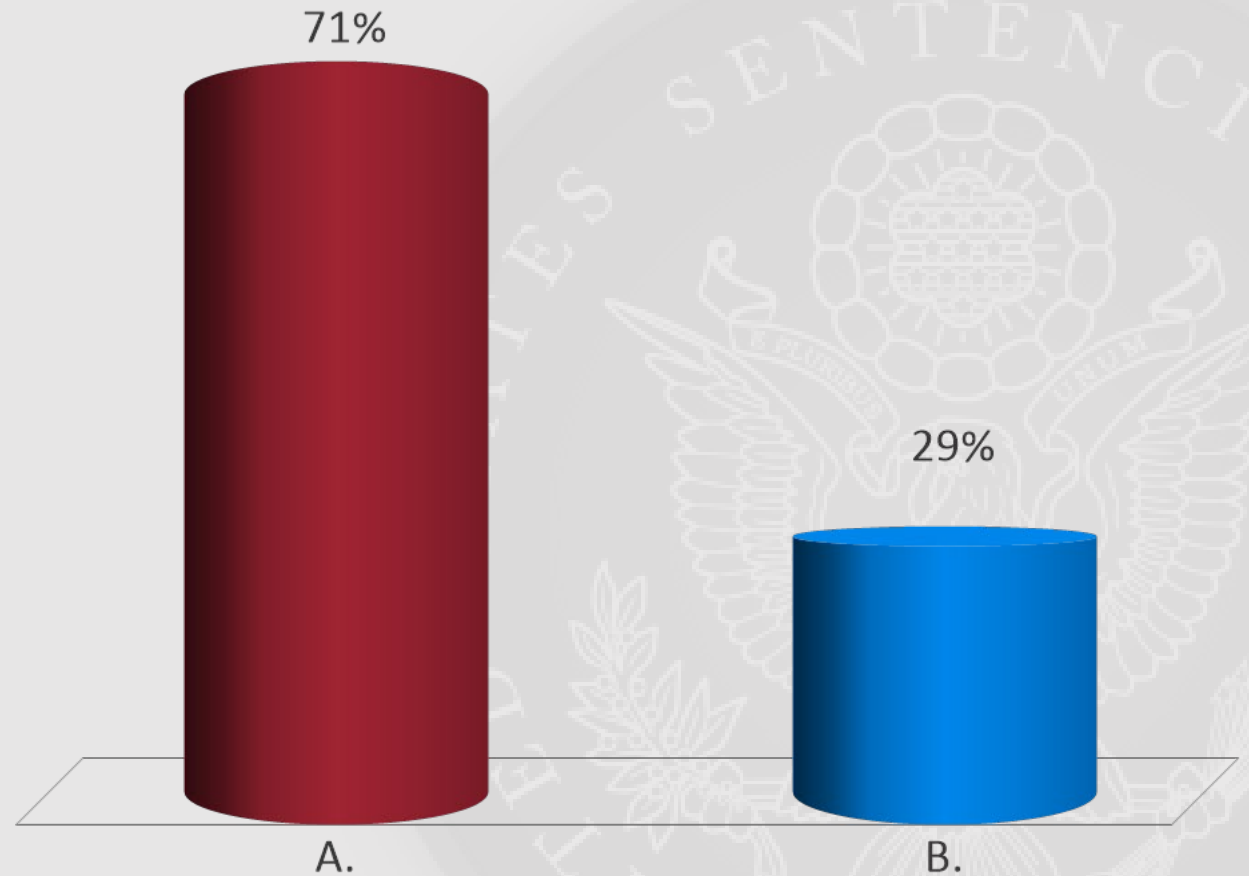
Gun Control Act

***excludes MCDs**

For purposes of calculating the number of firearms in the firearms guideline, is a machinegun conversion device a firearm?

A. Yes

✓ B. No



Proposed Amendment on Firearm Offenses

Part A

Machinegun Conversion Devices (MCDs)

Two Options to Amend §2K2.1

Option 1

Option 2

Part A: Two Options to Amend §2K2.1

Proposed Firearms Amendment

Option 1

Expand the Definition of “Firearm”
Include 26 U.S.C. § 5845(a)

Option 2

Extend Particular Subsections to Apply to
Title 26 Firearms

Part A: Two Options to Amend §2K2.1

Proposed Firearms Amendment

Option 1

Expand the Definition of “Firearm”
Include 26 U.S.C. § 5845(a)

“Firearm” has the meaning given that term in
18 U.S.C. § 921(a)(3).

Part A: Two Options to Amend §2K2.1

Proposed Firearms Amendment

Option 1

Expand the Definition of “Firearm”
Include 26 U.S.C. § 5845(a)

For purposes of this guideline, “*firearm*” includes any firearm described in 18 U.S.C. § 921(a)(3) or 26 U.S.C. § 5845(a).

Part A: Two Options to Amend §2K2.1

Proposed Firearms Amendment

Option 2

Extend Particular Subsections to Apply to Title 26 Firearms

§2K2.1(b)(1) *Number of Firearms*

§2K2.1(b)(4) *Stolen Firearm, Modified Serial Number, or Unserialized Firearm*

§2K2.1(b)(5) *Trafficking in Firearms*

§2K2.1(b)(6)(A) *Transportation Outside of the United States*

§2K2.1(b)(6)(B) *Possession/Use in Connection With Another Felony Offense*

§2K2.1(b)(7) *Recordkeeping Offenses*

§2K2.1(c) *Cross Reference*

Proposed Amendment on Firearm Offenses

Part A

Machinegun Conversion Devices (MCDs)

Two Options to Amend §2K2.1

Part B

Section 2K2.1(b)(4) – *Mens Rea*

Part B: Section 2K2.1(b)(4) *Mens Rea* Requirement

Proposed Firearms Amendment

+2

Stolen Firearm

+4

Modified Serial Number

Unserialized Firearm

OR

Part B: Section 2K2.1(b)(4) *Mens Rea* Requirement

Proposed Firearms Amendment

+2

Stolen Firearm

No Mental State

+4

Modified Serial Number

No Mental State

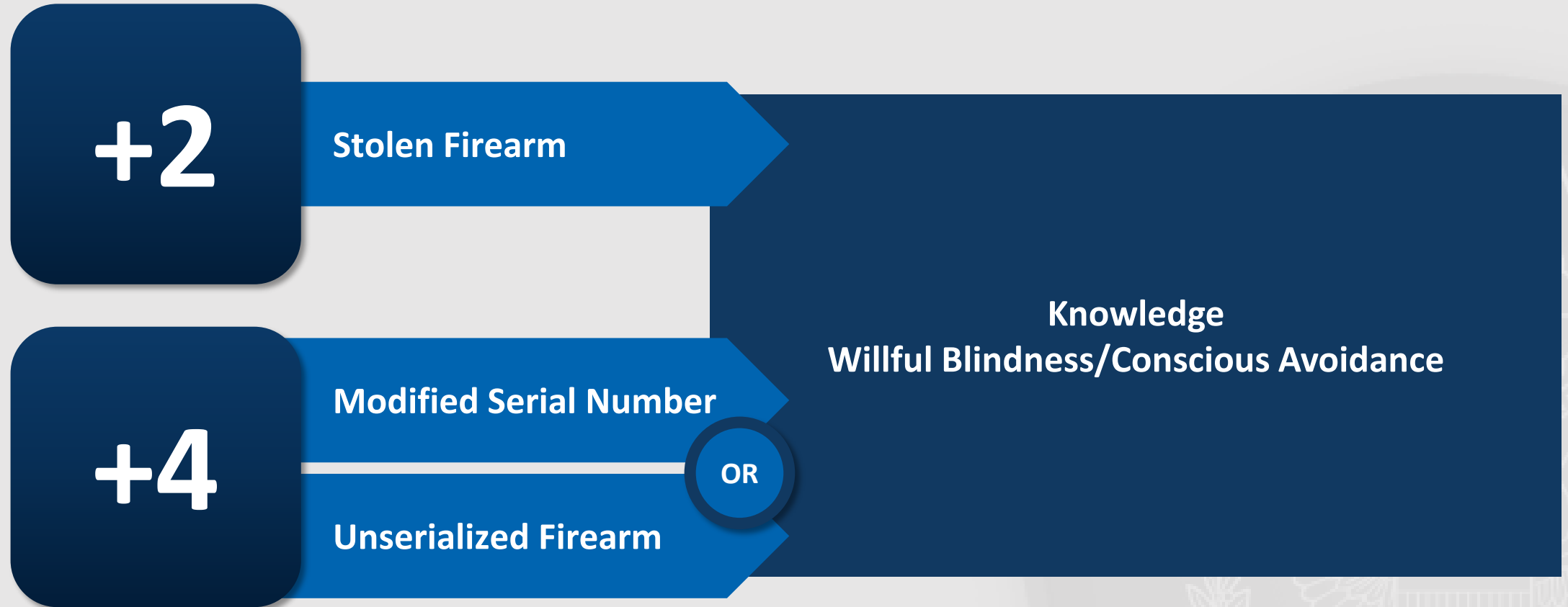
OR

Unserialized Firearm

Knowledge
Willful Blindness/Conscious Avoidance

Part B: Section 2K2.1(b)(4) *Mens Rea* Requirement

Proposed Firearms Amendment



Proposed Amendment on Firearm Offenses

Part A

Machinegun Conversion Devices (MCDs)

Two Options to Amend §2K2.1

Part B

Section 2K2.1(b)(4) – *Mens Rea*

Issue for Comment: Evidentiary Considerations

2025 Proposed Amendments

Career Offender

Firearms Offenses

Circuit Conflicts

Simplification

Drug Offenses

Supervised Release

Retroactivity IFC

2025 Proposed Amendments

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Supervised Release

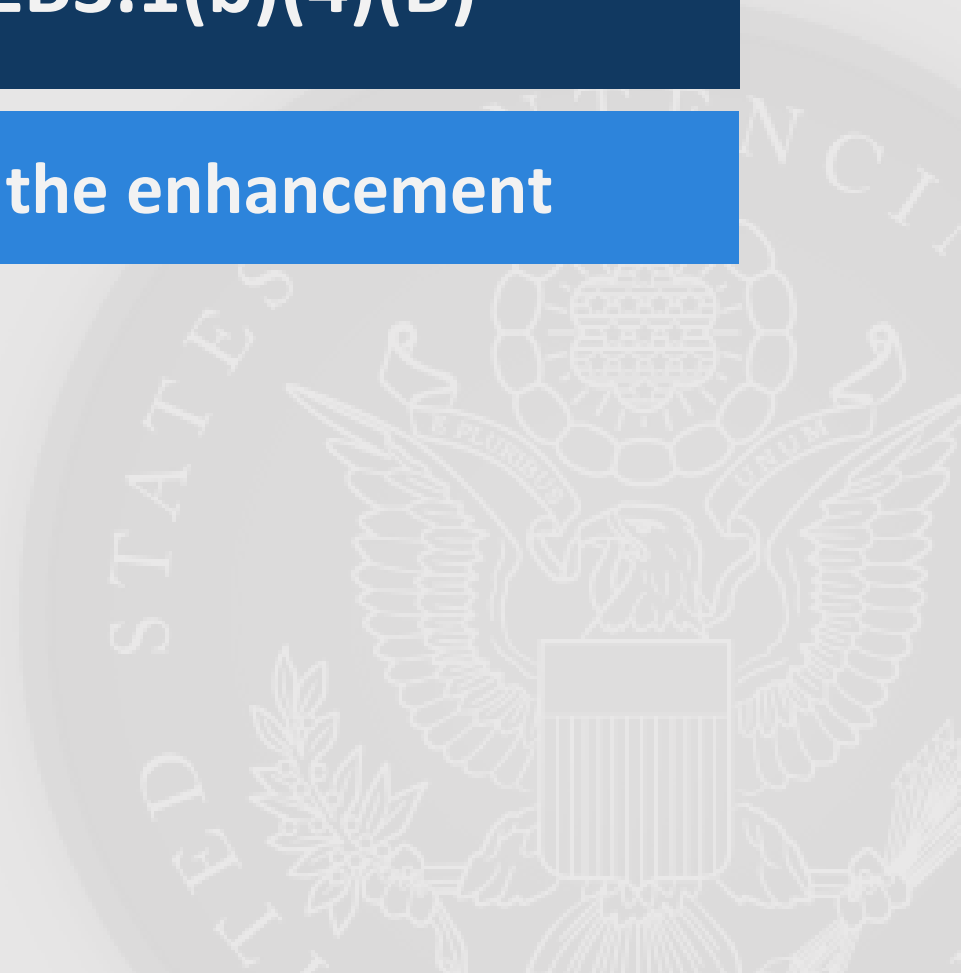
Retroactivity IFC

Proposed Amendment on Circuit Conflicts

Part A

Physically Restrained §2B3.1(b)(4)(B)

Three options to amend the enhancement



Proposed Amendment on Circuit Conflicts

Part A

Physically Restrained §2B3.1(b)(4)(B)

Three options to amend the enhancement

With or Without
Physical Measures

Physical measures
used

Two-Tiered
Approach

Circuit Split: Physical Restraint

With or Without Physical Measures

First Circuit

Fourth Circuit

Sixth Circuit

Tenth Circuit

Physical measures used

Second Circuit

Third Circuit

Fifth Circuit

Seventh Circuit

Ninth Circuit

D.C. Circuit

Two-Tiered Approach

2-levels for physical restraint

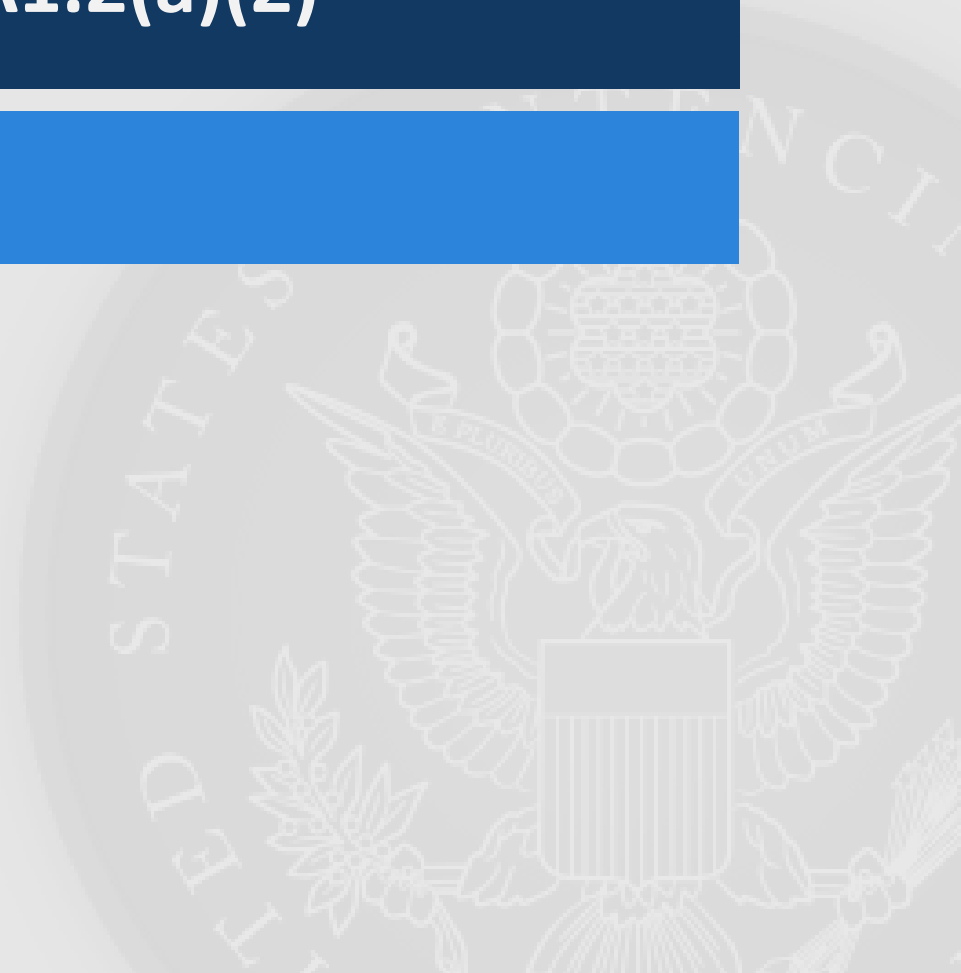
1-level for movement restricted

Proposed Amendment on Circuit Conflicts

Part B

Intervening Arrest - §4A1.2(a)(2)

New Definition



Circuit Split: Intervening Arrest

Formal, Custodial Arrest

Third Circuit

Sixth Circuit

Ninth Circuit

Eleventh Circuit

Traffic Stop Counts

Seventh Circuit

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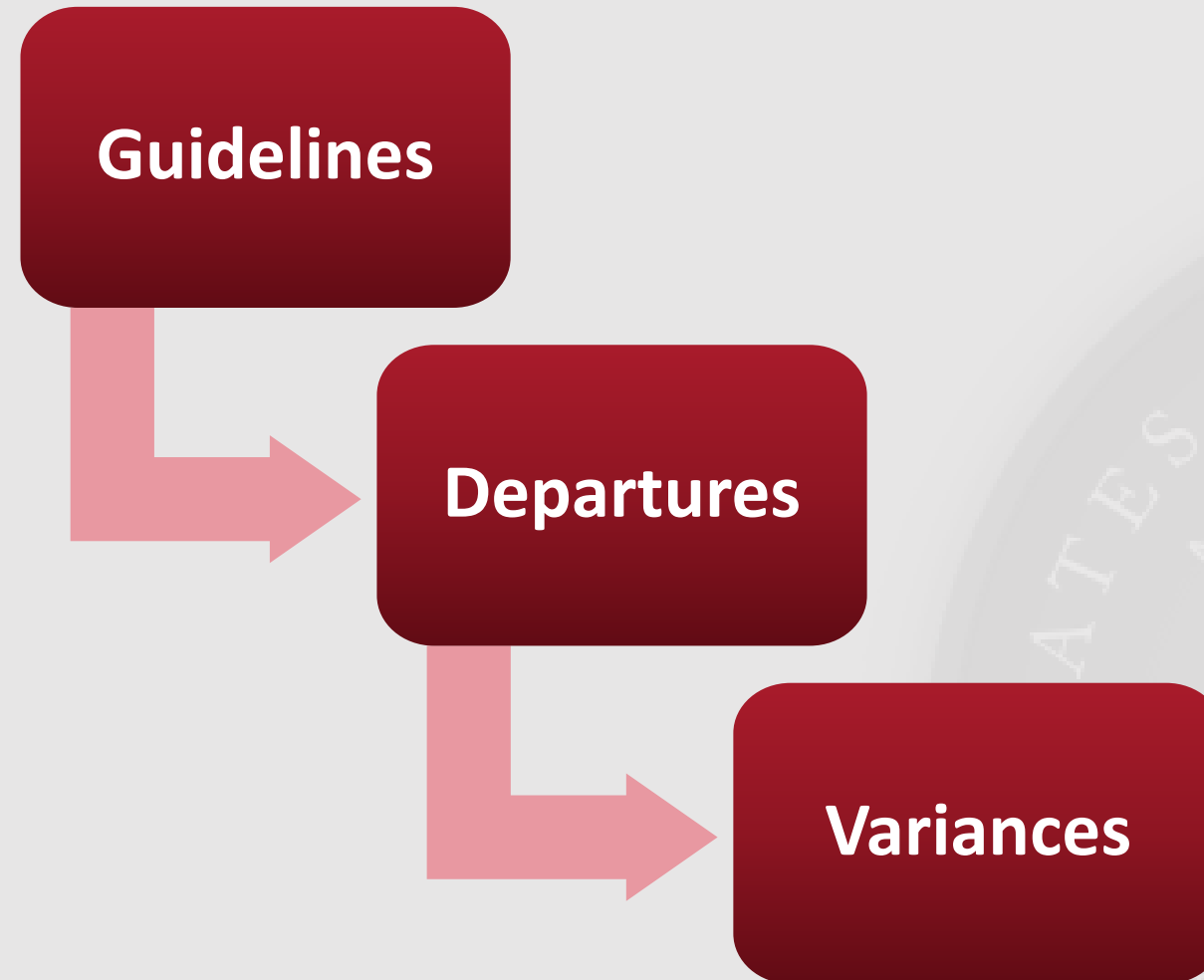
Simplification

Drug Offenses

Supervised Release

Retroactivity IFC

Proposed Amendment on Simplification



Proposed Amendment on Simplification

Guidelines



Variances



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Proposed Amendment on Drug Offenses

Part A

Recalibrating the Use of Drug Weight

Part B

Methamphetamine

Part C

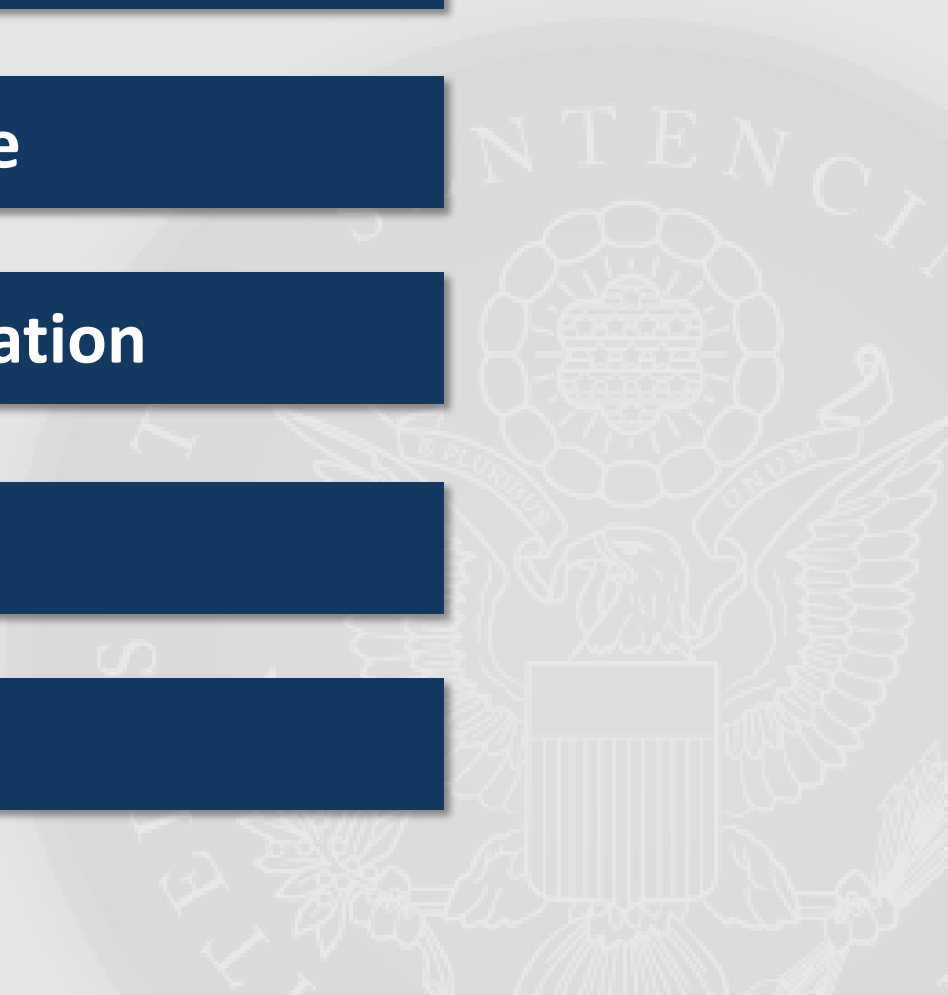
Fentanyl Misrepresentation

Part D

Machineguns

Part E

Safety Valve



Proposed Amendment on Drug Offenses

Part A

Recalibrating the Use of Drug Weight

Subpart 1

Setting a New Highest Base Offense Level in the Drug Quantity Table

Subpart 2

New Trafficking Functions Adjustment

Drug Quantity Table

Section 2D1.1(c)

(c) DRUG QUANTITY TABLE

CONTROLLED SUBSTANCES AND QUANTITY*	BASE OFFENSE LEVEL
(1) ● 90 KG or more of Heroin; ● 450 KG or more of Cocaine; ● 25.2 KG or more of Cocaine Base; ● 90 KG or more of PCP, or 9 KG or more of PCP (actual); ● 45 KG or more of Methamphetamine, or 4.5 KG or more of Methamphetamine (actual), or 4.5 KG or more of "Ice"; ● 45 KG or more of Amphetamine, or 4.5 KG or more of Amphetamine (actual); ● 900 G or more of LSD; ● 36 KG or more of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide); ● 9 KG or more of a Fentanyl Analogue; ● 90,000 KG or more of Marihuana; ● 18,000 KG or more of Hashish; ● 1,800 KG or more of Hashish Oil; ● 90,000,000 units or more of Ketamine; ● 90,000,000 units or more of Schedule I or II Depressants; ● 5,625,000 units or more of Flunitrazepam; ● 90,000 KG or more of <i>Converted Drug Weight</i>.	Level 38
(2) ● At least 30 KG but less than 90 KG of Heroin; ● At least 150 KG but less than 450 KG of Cocaine; ● At least 8.4 KG but less than 25.2 KG of Cocaine Base; ● At least 30 KG but less than 90 KG of PCP, or at least 3 KG but less than 9 KG of PCP (actual); ● At least 15 KG but less than 45 KG of Methamphetamine, or at least 1.5 KG but less than 4.5 KG of Methamphetamine (actual), or at least 1.5 KG but less than 4.5 KG of "Ice";	Level 36

Proposed Amendment on Drug Offenses

Part A

Recalibrating the Use of Drug Weight

Subpart 1

Setting a New Highest Base Offense Level in the Drug Quantity Table

Three Options for Highest BOL

Subpart 2

New Trafficking Functions Adjustment

Proposed Amendment on Drug Offenses

Part A

Recalibrating the Use of Drug Weight

Subpart 2

New Trafficking Functions Adjustment

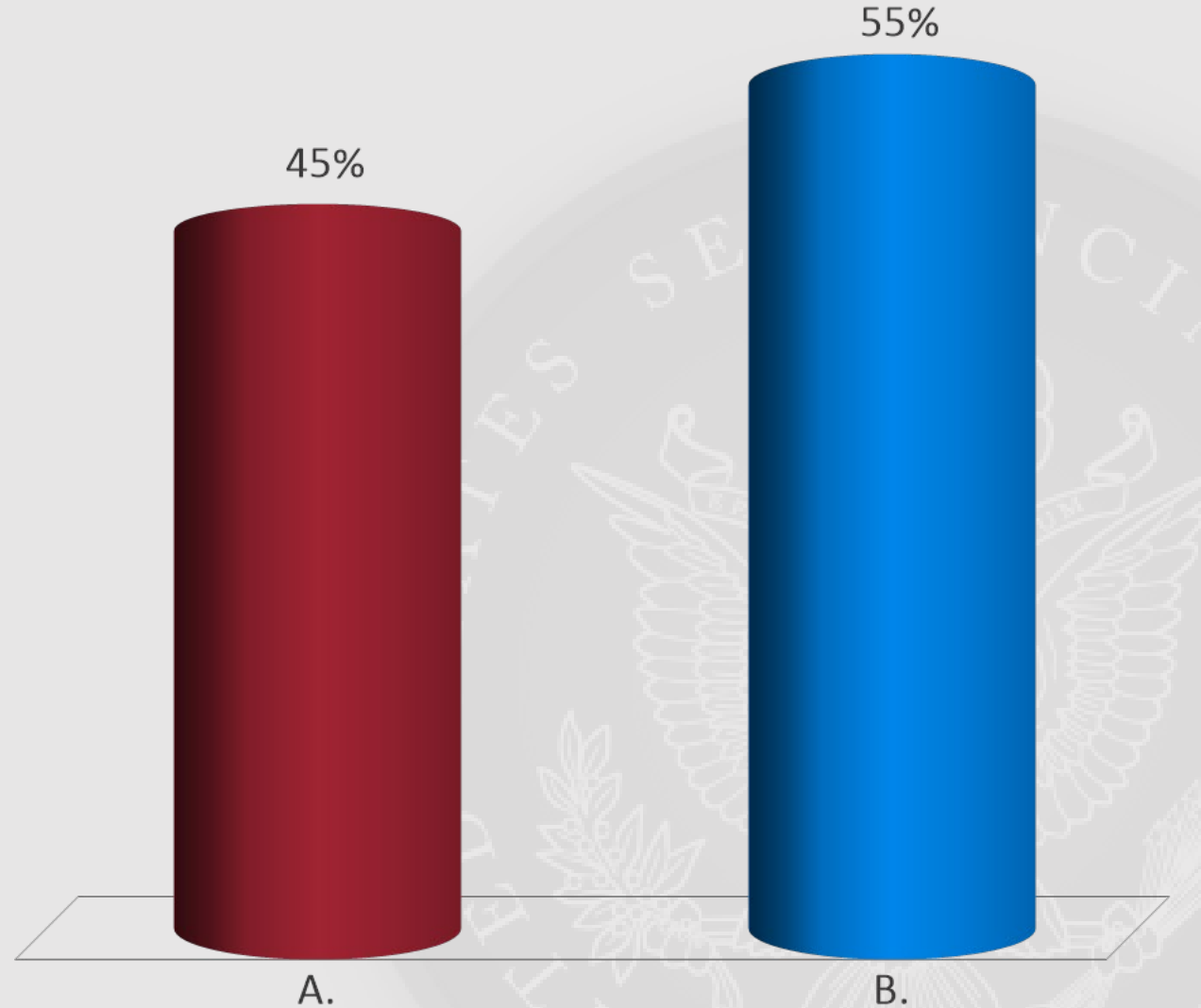
Option 1: Listed Low-Level Trafficking Functions

Option 2: Examples of Low-Level Functions

Non-Applicability of §3B1.2 (Mitigating Role)

True or False: Methamphetamine is highly and uniformly pure across the country.

- ✓ **A. True**
- B. False**



Methamphetamine Report

June 2024

Methamphetamine Trafficking Offenses
in the Federal Criminal Justice System



United States Sentencing Commission
June 2024

Key Findings:

- Meth is highly and uniformly pure – avg. 93.2%
- Sentences imposed are impacted by local laboratory testing practices, which vary nationally
- Production of meth has shifted outside the US

Proposed Amendment on Drug Offenses

Part A

Recalibrating the Use of Drug Weight

Part B

Methamphetamine

Part C

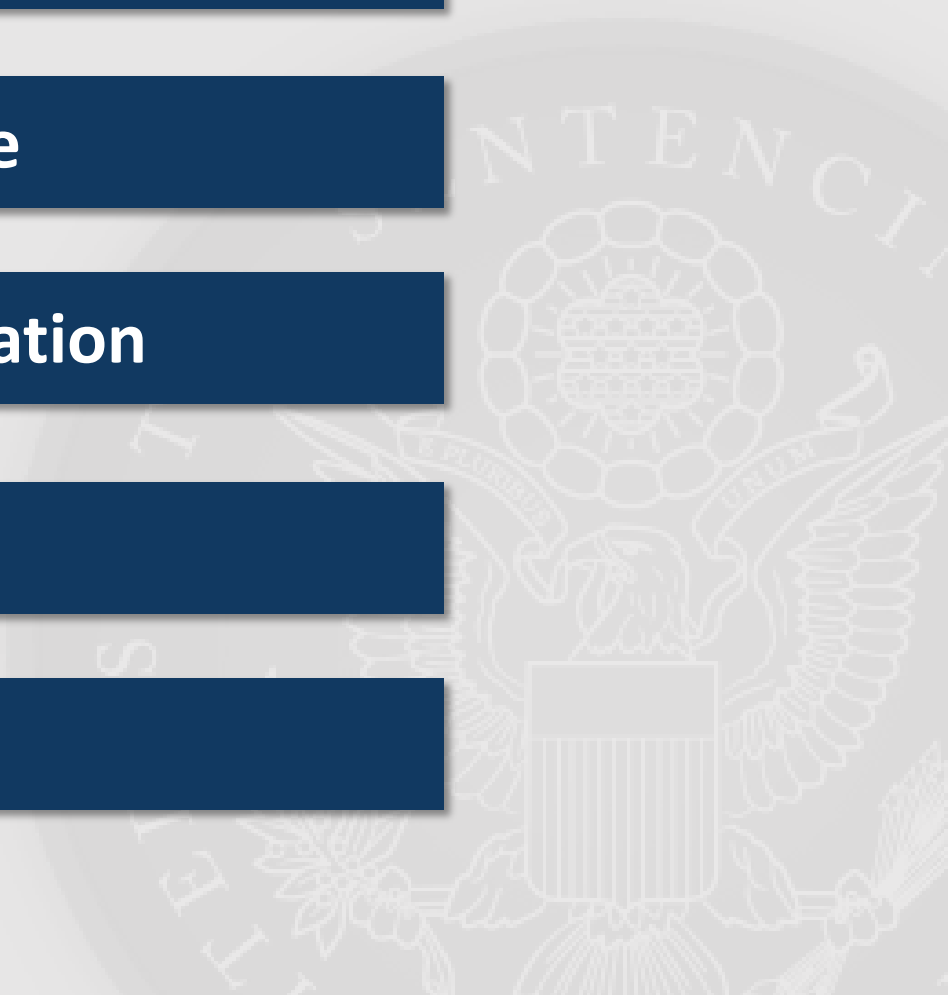
Fentanyl Misrepresentation

Part D

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Safety Valve



Proposed Amendment on Drug Offenses

Part B

Methamphetamine

Methamphetamine

Mixture

**Methamphetamine
(Actual)**

“Ice”



Calculating Offense Levels for Meth Cases

Notes (B), (C) to the Drug Quantity Table

If substance is...	Classify as...	Calculate BOL by...
"d-meth hydrochloride of at least 80% purity"	Ice	Mixture Weight
Not Ice (but 10% or greater purity)	Methamphetamine (Actual)	Mixture Weight x Purity
Less than 10% or unknown purity	Methamphetamine	Mixture Weight

Proposed Amendment on Drug Offenses

Part B

Methamphetamine

Subpart 1

“Ice”

Subpart 2

Methamphetamine Purity Distinction

Two Options

Proposed Amendment on Drug Offenses

Part A

Recalibrating the Use of Drug Weight

Part B

Methamphetamine

Part C

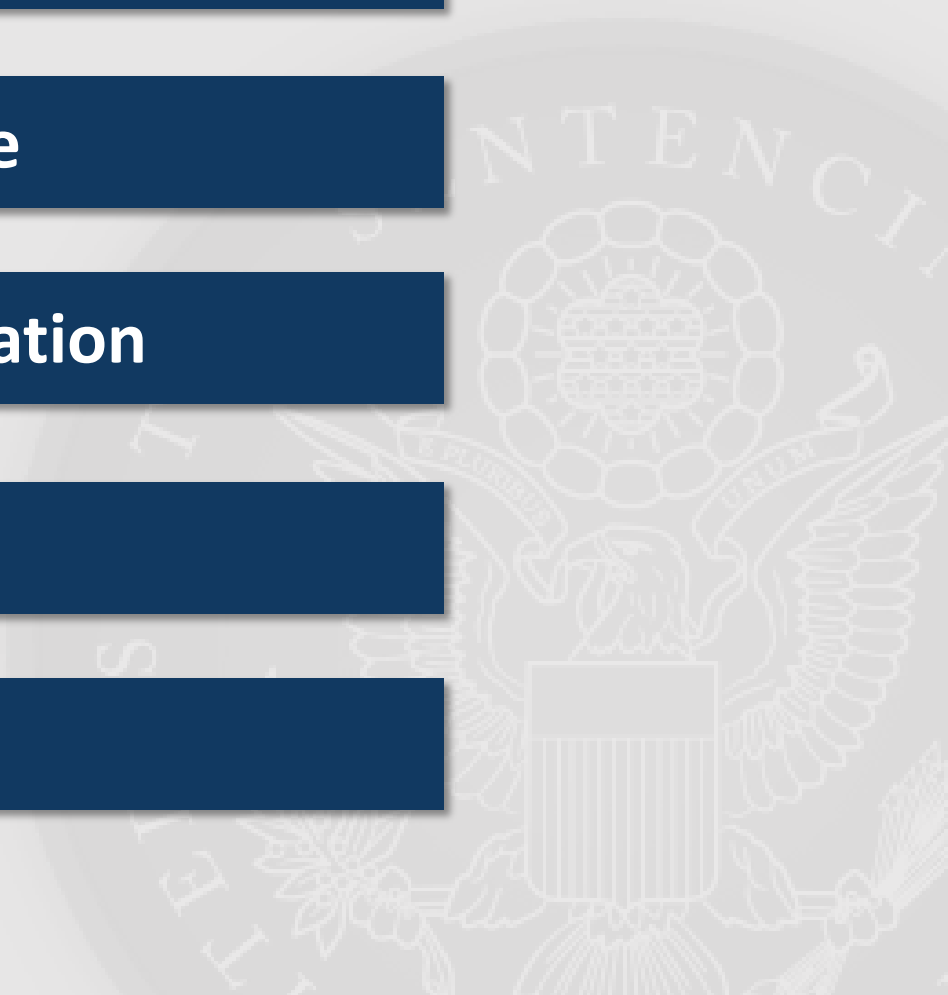
Fentanyl Misrepresentation

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Proposed Amendment on Drug Offenses

Part C

Fentanyl Misrepresentation

Fentanyl & Fentanyl Analogue Enhancement

Section 2D1.1(b)(13)

The Defendant...

knowingly misrepresented / knowingly marketed as another substance

+4

represented or marketed as a legitimately manufactured drug; AND
acted with willful blindness / conscious avoidance of knowledge

+2

Proposed Amendment on Drug Offenses

Part C

Fentanyl Misrepresentation

Option 1

Offense-Based Enhancement
No Mens Rea Requirement

Option 2

Defendant-Based Enhancement
Two Mens Rea Alternatives

Option 3

Tiered Enhancement

Proposed Amendment on Drug Offenses

Part A

Recalibrating the Use of Drug Weight

Part B

Methamphetamine

Part C

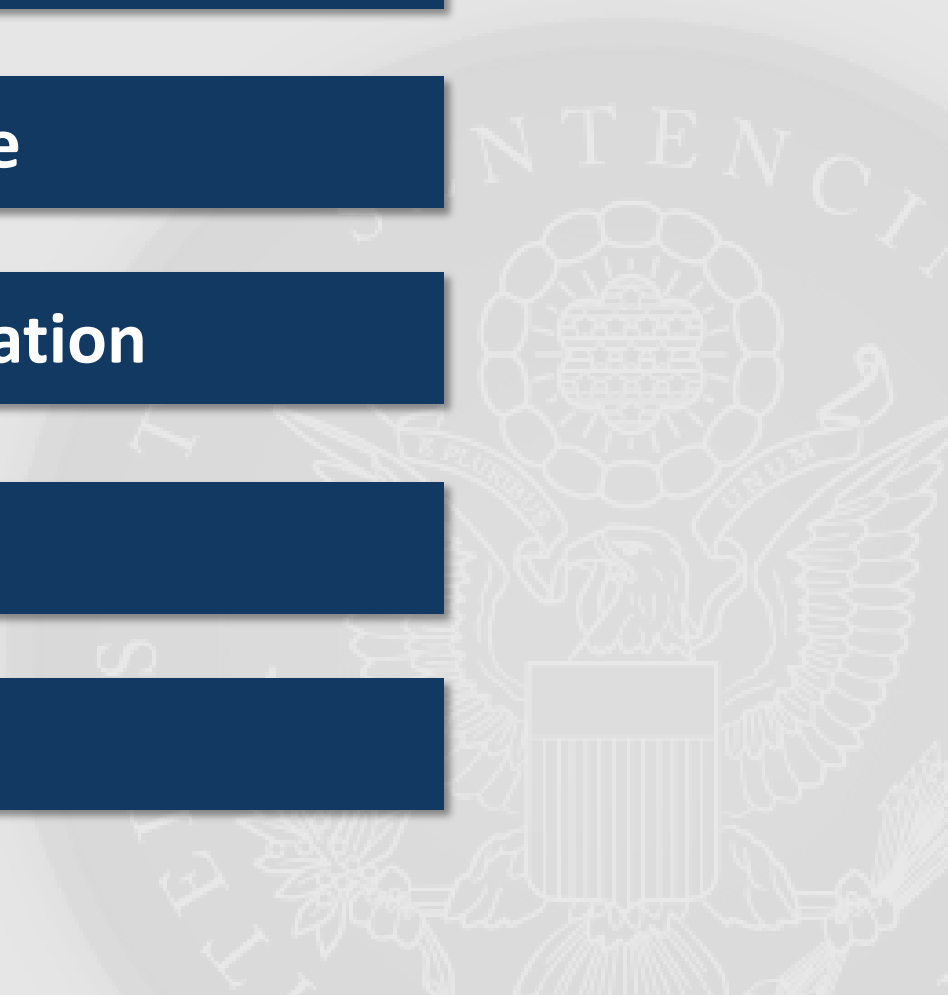
Fentanyl Misrepresentation

Part D

Machineguns

Part E

Safety Valve



Proposed Amendment on Drug Offenses

Part D

Machineguns

Weapon Enhancement

Section 2D1.1(b)(1)

Dangerous Weapon (Including Firearm) Was Possessed

+2

Proposed Amendment on Drug Offenses

Part D

Machineguns

Weapon Enhancement

Proposed Amendment to §2D1.1(b)(1)

Apply the Greatest

Dangerous Weapon (Including Firearm) Was Possessed

+2

Machinegun Was Possessed

+4

Proposed Amendment on Drug Offenses

Part A

Recalibrating the Use of Drug Weight

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Methamphetamine

Part C

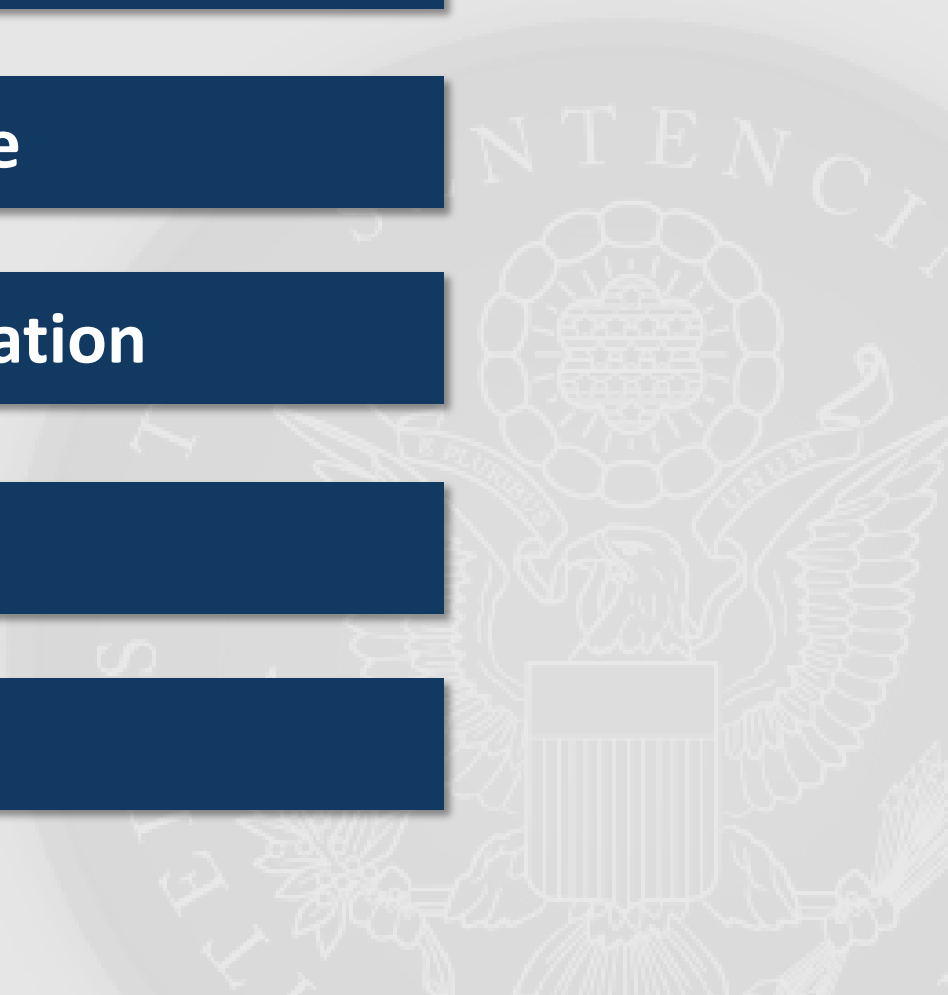
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Machineguns

Part E

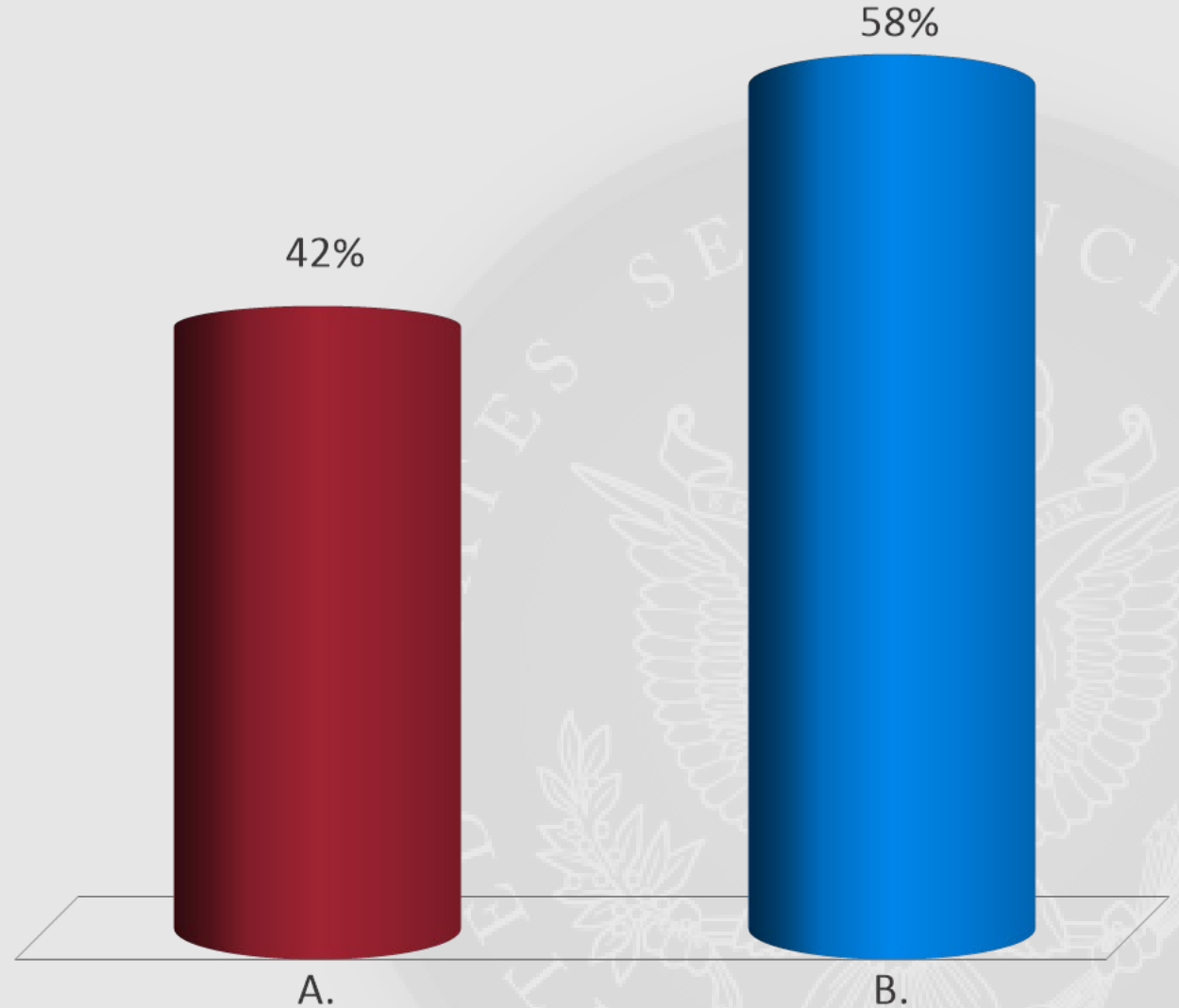
Safety Valve



True or False. A safety valve proffer requires an in-person debriefing.

A. True

✓ B. False



Proposed Amendment on Drug Offenses

Part E

Safety Valve

Guidelines Safety Valve Section 5C1.2

(a)(1)

Limited
Criminal
History

(a)(2)

No Dangerous
Weapon
or Violence

(a)(3)

No
Death or
Serious Bodily
injury

(a)(4)

No Leadership
Role

(a)(5)

Safety Valve
Proffer

Proposed Amendment on Drug Offenses

Part E

Safety Valve

Guidelines Safety Valve Section 5C1.2

(a)(5)

Safety Valve
Proffer

Truthfully provided all information regarding the offense or offenses that were part of the same course of conduct/common scheme or plan

Proposed Amendment to Commentary –
Application of Subsection (a)(5)

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Retroactivity IFC

Proposed Supervised Release Amendment

Part

A

Imposition of Supervised Release

Part

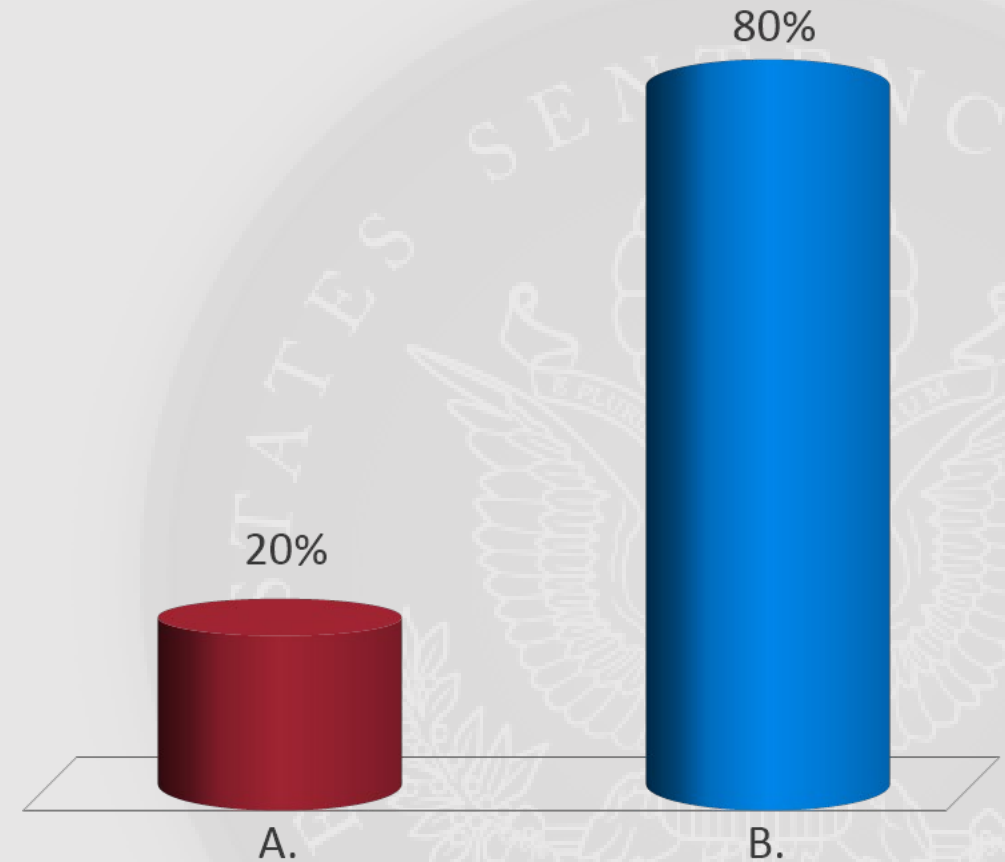
B

**Procedures for Violations of Supervised
Release**

May a court consider retribution in making decisions about supervised release?

A. Yes

B. No



Esteras v. United States

Argument Held on Feb. 25, 2025



Question Presented:

Whether, even though Congress excluded 18 U.S.C. § 3553(a)(2)(A) from 18 U.S.C. § 3583(e)'s list of factors to consider when revoking supervised release, a district court may rely on the Section 3553(a)(2)(A) factors when revoking supervised release.

Proposed Supervised Release Amendment

Part

A

Imposition of Supervised Release

Provide greater discretion upon imposition of Supervised Release

Ensure Chapter 5 meet rehabilitative ends

Proposed Supervised Release Amendment

Part

A

Imposition of Supervised Release



Consider wide range of factors when imposing supervised release



Remove requirement of at least one year of supervised release



Conduct individualized assessment (determination) when deciding what length of supervised release



Add new policy statement addressing court's authority to extend or terminate a term of supervised release

Proposed Supervised Release Amendment

Part

B

Procedures for Violations of Supervised Release

Provide clear discretion to respond to a violation of probation or supervised release

Ensure Chapter 7 reflects the differences between probation and supervised release



Proposed Supervised Release Amendment

Part

B

Procedures for Violations of Supervised Release



Consider wide range of factors when addressing supervised release violations



New Grade D violation – technical violations and incorporating ranges of imprisonment in the supervised release revocation table



Conduct individualized assessment (determination) when deciding an appropriate response to non-compliance with supervised release, whether to imposed another term of supervised release and the length of imprisonment upon an instance of revocation

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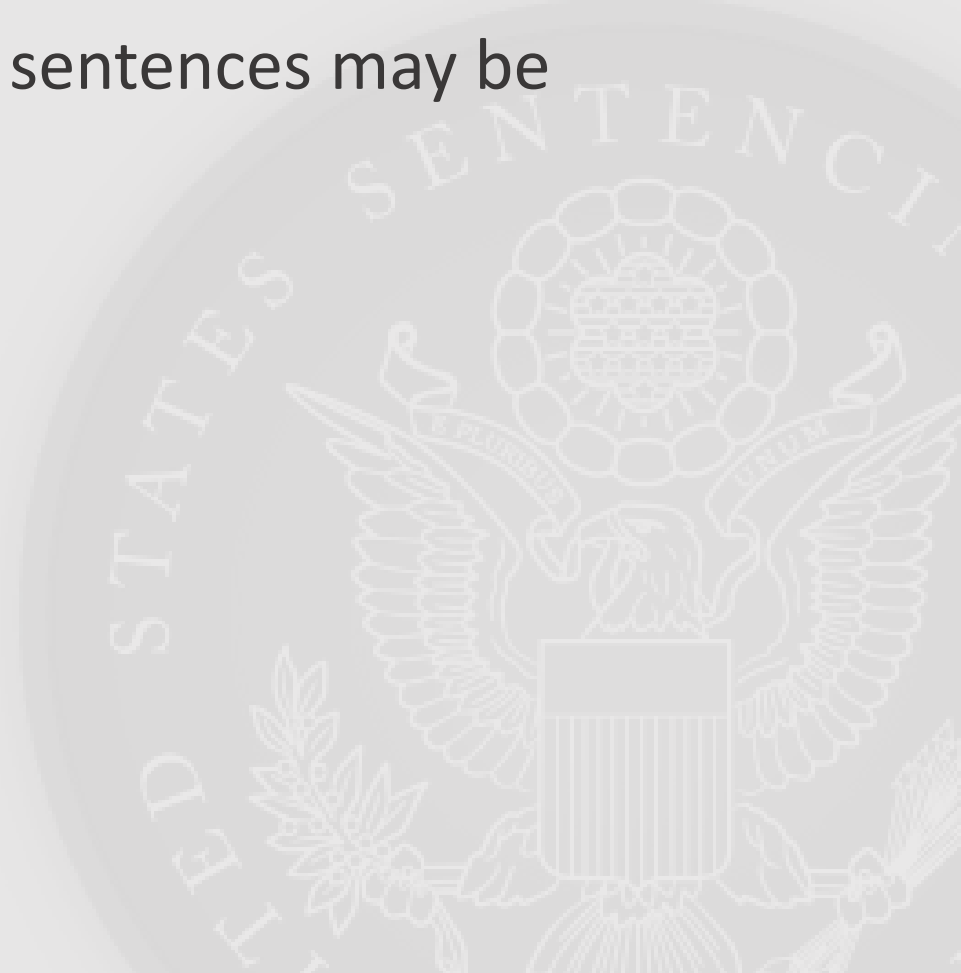
Supervised Release

Retroactivity IFC

Retroactivity

28 U.S.C. § 994(u)

If the Commission reduces the term of imprisonment recommended in the guidelines, it shall specify whether the sentences may be retroactively reduced.



Retroactivity

Section 1B1.10, Background Commentary

Non-Exhaustive Retroactivity Criteria:

- Purpose of the Amendment
- Magnitude of the Change in the Guideline Range
- Difficulty of Applying Retroactivity



Issue for Comment on Retroactivity Criteria

Changes to Criteria for Retroactivity

Rules of Practice and Procedure



Questions?



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