



Grouping of Multiple Counts

Wednesday, September 7, 2016

1:45 pm – 3:00 pm

3:15 pm – 4:30 pm



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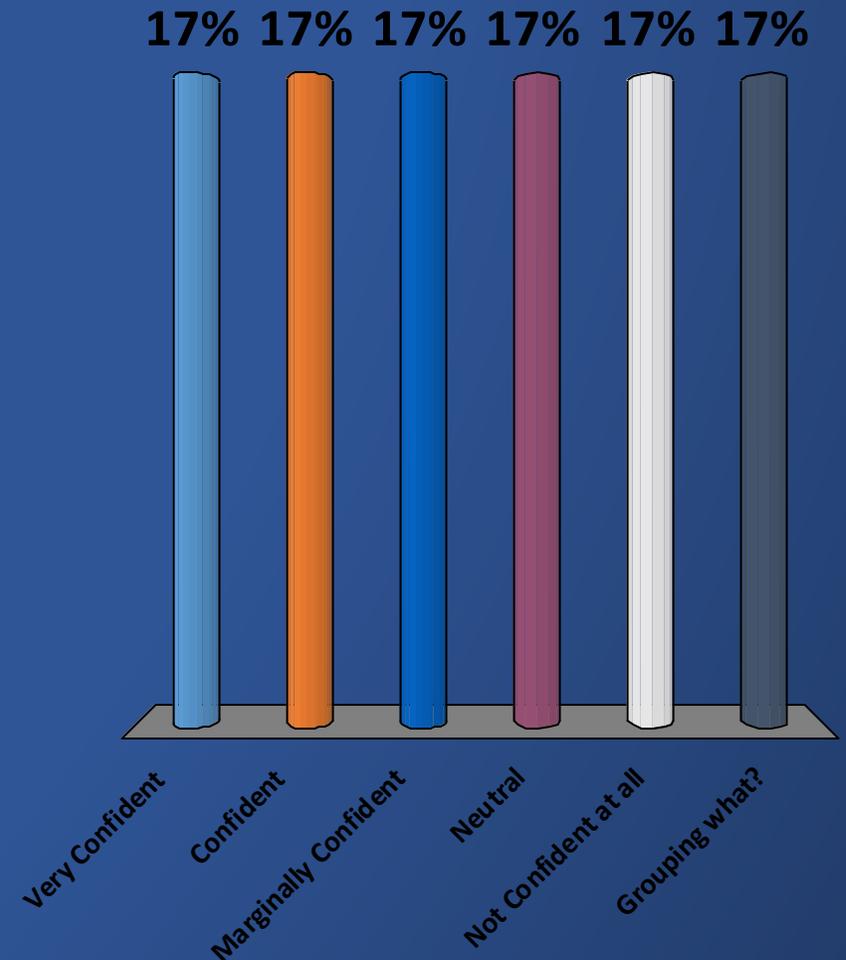
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How confident are you in your understanding of the grouping rules?

- A. Very Confident
- B. Confident
- C. Marginally Confident
- D. Neutral
- E. Not Confident at all
- F. Grouping what?



Today's Objective

- Demystify the process of grouping multiple counts of conviction
 - “One-Pager”
 - Decision Tree
 - Scenarios



What is “Grouping”?

- Grouping is the application of the rules in Chapter 3, Part D to determine a single offense level for defendants convicted of multiple counts



There Are Two Sets of Rules Used to Determine a Single Offense Level

1. “Grouping” (§3D1.2)

- Closely related counts are treated as a single, composite harm
- One offense level represents all counts



There Are Two Sets of Rules Used to Determine a Single Offense Level (cont.)

2. “Assigning Units” (§3D1.4)

- Provides incremental punishment for multiple counts involving separate, distinct harms
- Adds offense levels for additional criminal conduct



Tips for Determining a Single Offense Level for Multiple Counts

- Depending upon the specific counts in a particular case, a multiple count case may use
 - Only the grouping rules at §3D1.2;
 - Only the assignment of units at §3D1.4; or
 - Both the grouping rules (§3D1.2) and the assignment of units (§3D1.4)



Tips for Determining a Single Offense Level for Multiple Counts (cont.)

- The guideline calculations for the specific counts in a particular case will dictate which grouping rules apply
 - You don't have a choice
- Grouping is a process of elimination
 - In every multiple counts case, the court **MUST** determine **ONE** offense level representative of all of the counts of conviction





Overview of the Grouping Process



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Steps in Determining a Single Offense Level for Multiple Count Cases

1. Grouping

- Group under “Rule (d)”
- Group under “Rules (a), (b), or (c)”

2. Incremental Increases

- Assignment of units
- Additional offense levels



Step 1: Grouping “Rule (d)”

If counts use the same Chapter Two guideline

and

If that guideline is included at §3D1.2(d):

Apply the guidelines as in single count application



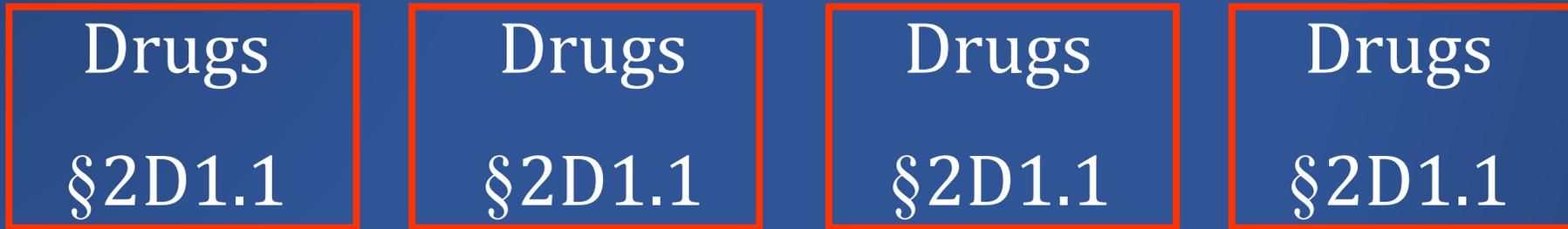
Examples of Chapter Two Guidelines in the Included List at §3D1.2(d)

- Drug trafficking
- Fraud, theft, & embezzlement
- Firearms
- Alien smuggling
- Trafficking/possession of child pornography
- Money laundering
- Tax violations
- Counterfeiting
- Bribery
- Other similar offenses



Grouping under “Rule (d)”

Example:



One application with the offense level for the group based on the aggregate and the conduct “taken as a whole”





Scenarios 1 – 3



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Counts Involving Different Chapter Two Guidelines on the “Included” List

§3D1.2(d), App. Note 6 & §3D1.3(b), App. Note 3

- Different guidelines do not group under “Rule (d)” merely by being
 - on the “included” list
 - on the same line on the “included” list



Examples of Chapter Two Guidelines in the Excluded List at §3D1.2(d)

- Robbery
- Assault
- Murder
- Kidnapping
- Criminal sexual abuse
- Production of child pornography
- Extortion
- Blackmail
- Burglary
- Other similar offenses



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



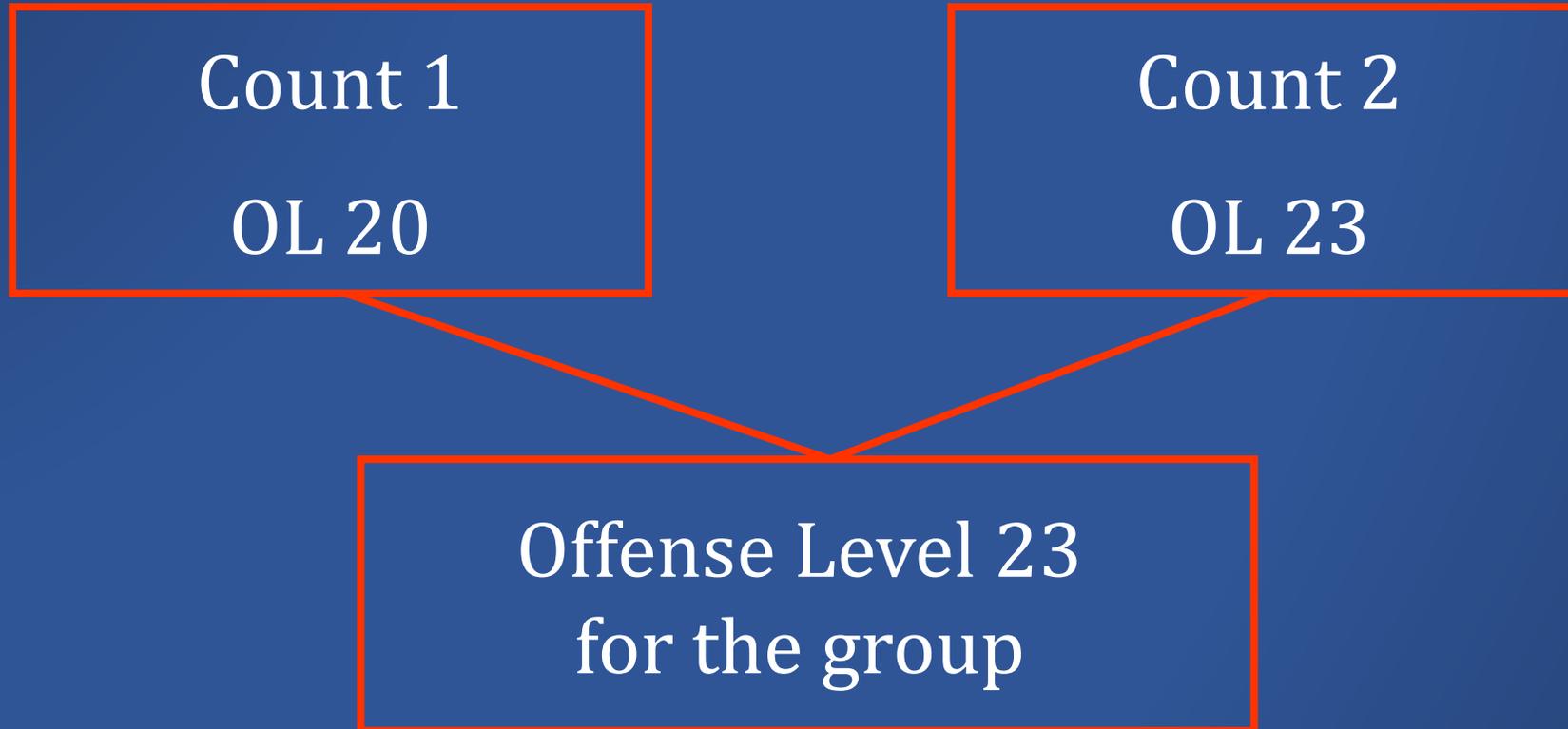
Grouping Closely Related Counts at §3D1.2

Multiple counts involve substantially the same harm under the meaning of these rules:

- (a) Same Victim, Same Act
- (b) Same Victim, Two or More Acts
- (c) Conduct Treated by Characteristic
- (d) Based on an Aggregate



Impact of Counts Grouping under Rules (a), (b), or (c)



“Rule (c)”

“When one of the counts embodies conduct that is treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to another of the counts.”



Grouping Under Rule (c) Requires:

- One count contains an SOC in the Chapter 2 guideline that represents (“embodies”) the other count of conviction; or
- One count contains a Chapter Three adjustment that “embodies” the other count of conviction





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“Rule (a)” and “Rule (b)”

- Rule (a): “When counts involve the **same victim** and the same act or transaction.”
- Rule (b): “When counts involve the **same victim** and two or more acts or transactions connected by a common criminal objective or constituting part of a common scheme or plan.”



Do Counts Involve the Same Victim?

- Definition of “Victim”:
 - The one person who is directly and most seriously affected by the offense; does not include indirect or secondary victims.
 - Some offenses do not have an identifiable victim; in these cases, the victim is the societal interest that is harmed.



Do Counts Involve Separate Instances of Fear and Risk of Harm?

- Grouping closely related counts at §3D1.2 only applies when multiple counts represent essentially one composite harm
 - Multiple counts that represent separate instances of fear and risk of harm CANNOT be grouped under §3D1.2
 - For example, robbery of the same victim on two separate occasions





Scenarios 5 – 6



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POP QUIZ

Scenarios 7 - 10



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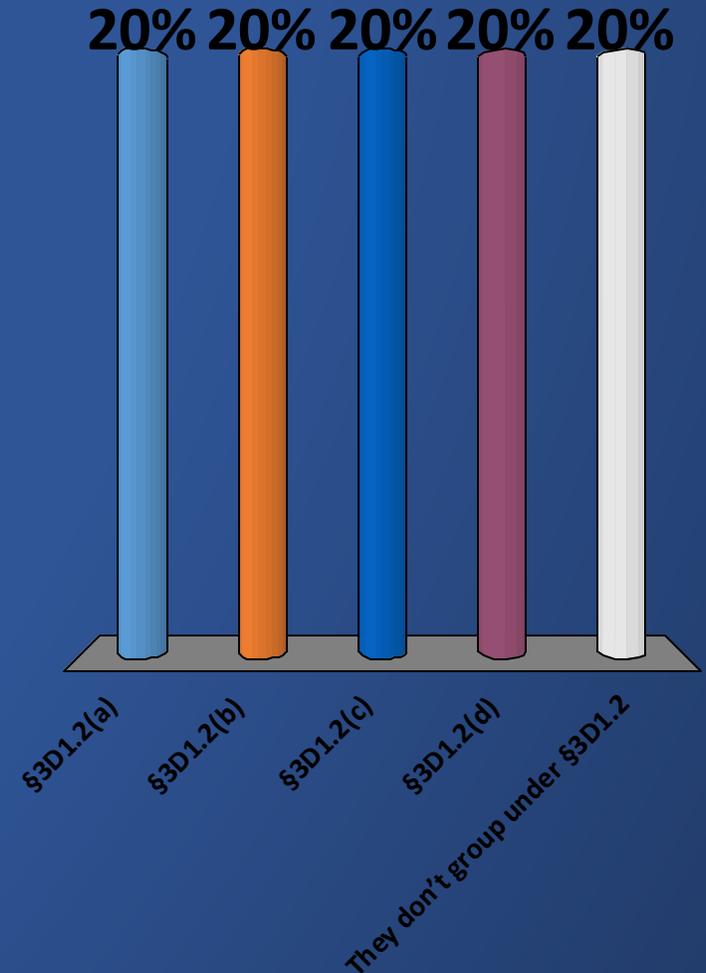
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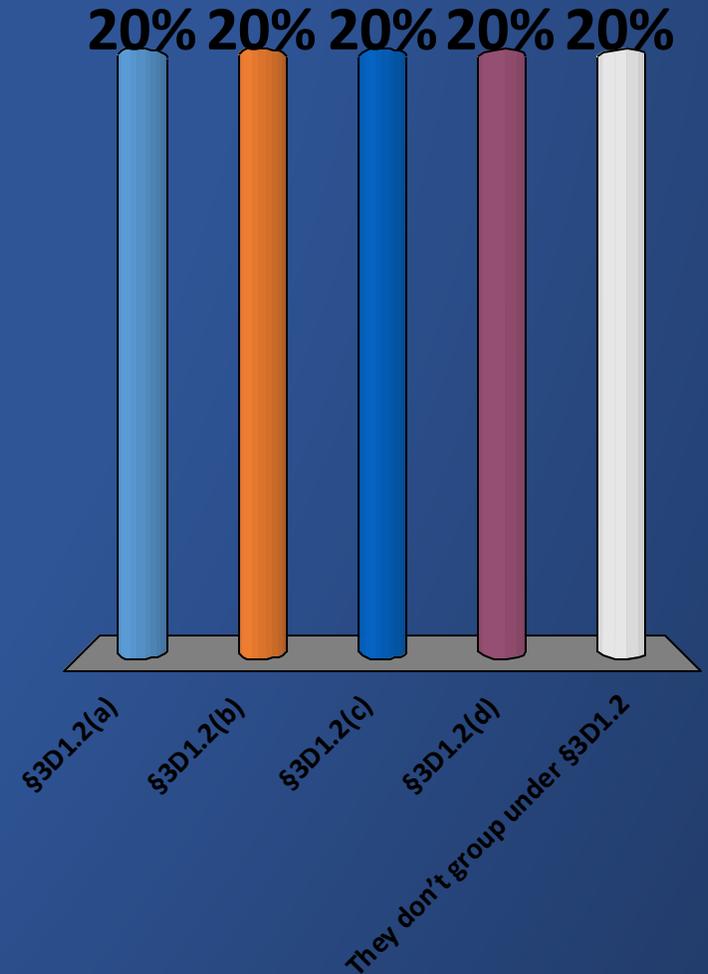
Scenario 7: Under which rule do these counts group?

- A. §3D1.2(a)
- B. §3D1.2(b)
- C. §3D1.2(c)
- D. §3D1.2(d)
- E. They don't group under §3D1.2



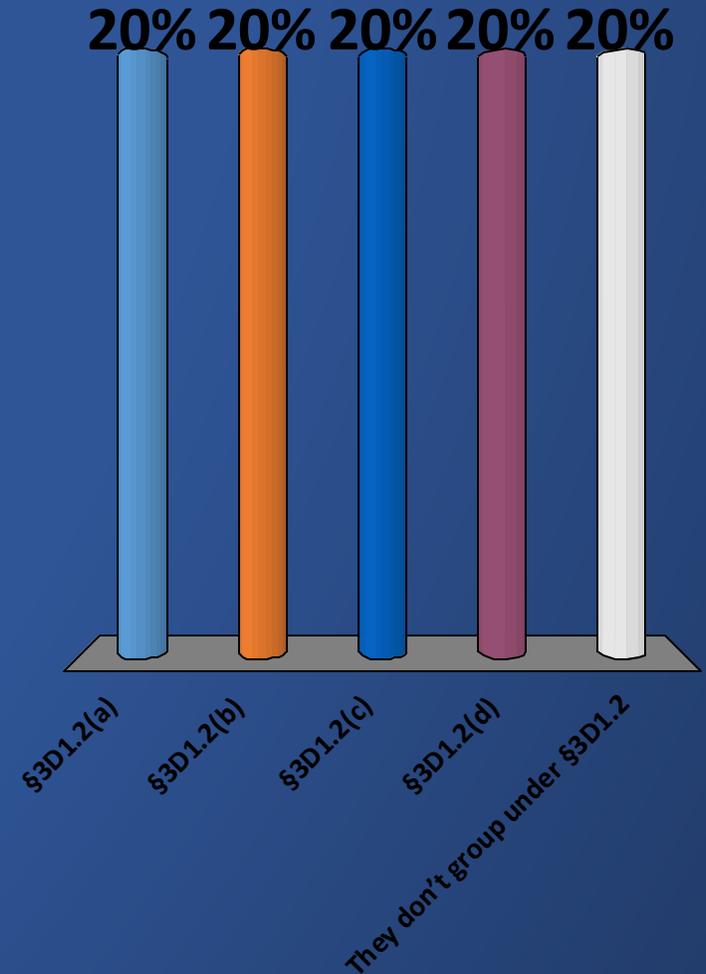
Scenario 8: Under which rule do these counts group?

- A. §3D1.2(a)
- B. §3D1.2(b)
- C. §3D1.2(c)
- D. §3D1.2(d)
- E. They don't group under §3D1.2



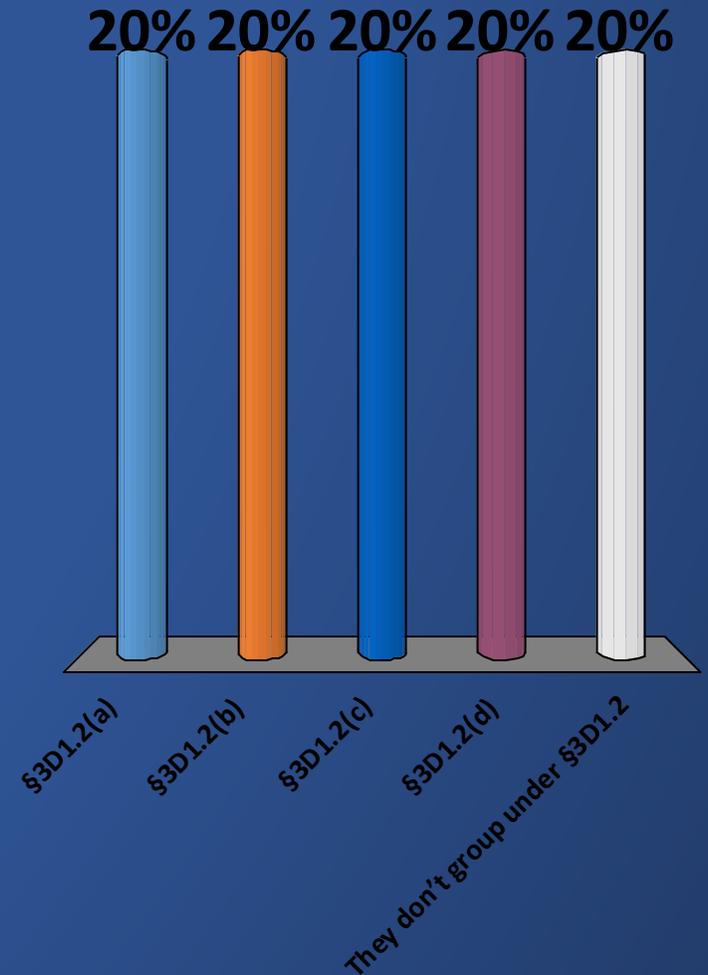
Scenario 9: Under which rule do these counts group?

- A. §3D1.2(a)
- B. §3D1.2(b)
- C. §3D1.2(c)
- D. §3D1.2(d)
- E. They don't group under §3D1.2



Scenario 10: Under which rule do these counts group?

- A. §3D1.2(a)
- B. §3D1.2(b)
- C. §3D1.2(c)
- D. §3D1.2(d)
- E. They don't group under §3D1.2



Steps in Determining a Single Offense Level for Multiple Count Cases

1. Grouping

- Group under “Rule (d)”
- Group under “Rules (a), (b), or (c)”

2. Incremental Increases

- Assignment of units
- Additional offense levels



Assignment of Units (§3D1.4)

- If, after application of the grouping rules at §3D1.2, there are counts of conviction or count groups for which a single offense level must still be determined, §3D1.4 must be applied.



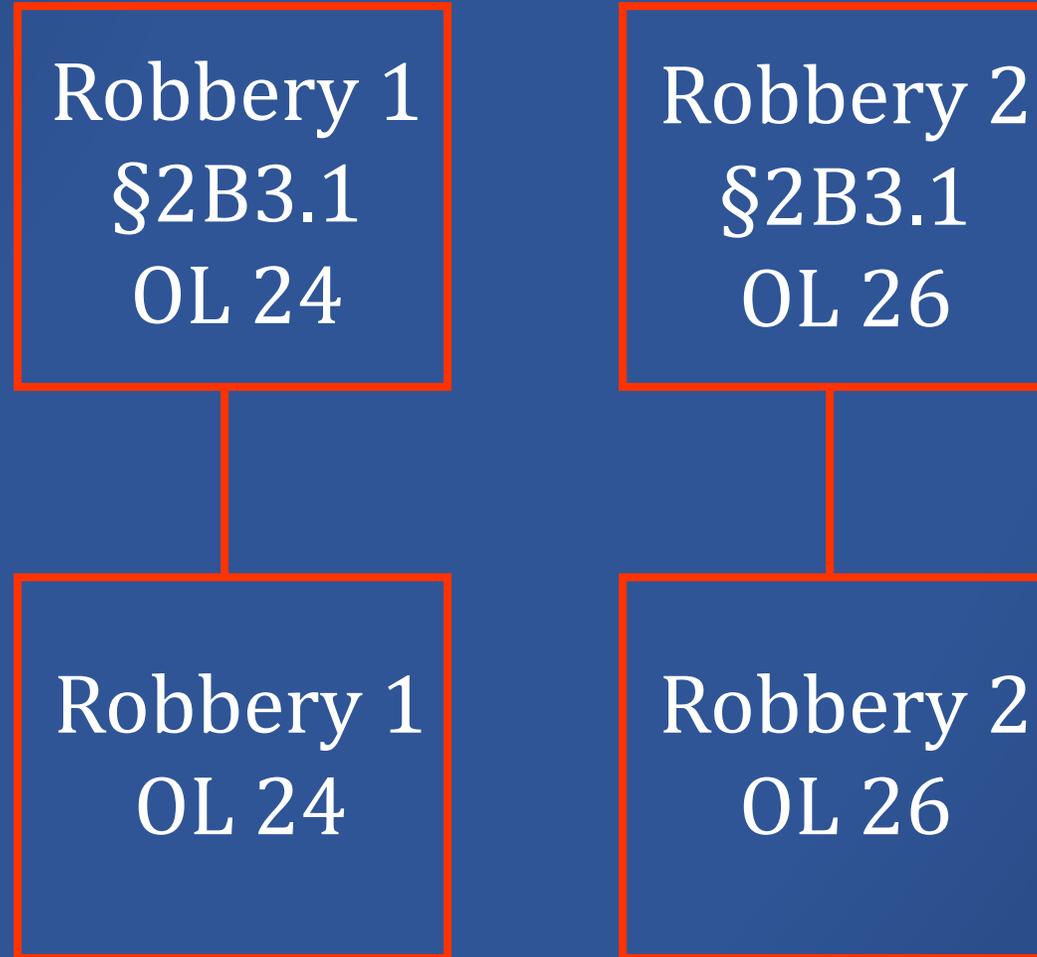
Assignment of Units

If more than one group:

- Compare the offense level of the highest group to the offense levels of the other groups, and assign “units”
- Increase the offense level of the highest group according to a guideline table corresponding to the number of “units”



Assign “Units” and Additional Levels



Assignment of Units (§3D1.4)

Highest Offense Level (or Equal)	1
1-4 Levels Less Serious	1
5-8 Levels Less Serious	$\frac{1}{2}$
9 or More Levels Less Serious	0



Assignment of Units (§3D1.4)

	Robbery 1 Group	Robbery 2 Group
	OL 24	OL 26
Assignment of Units	1 unit	1 unit
Total Units	<u>2</u>	



Additional Offense Levels (§3D1.4)

Number of Units	Increase in Offense Level
1	None
1½	add 1 level
2	add 2 levels
2½ - 3	add 3 levels
3½ - 5	add 4 levels
more than 5	add 5 levels



Additional Offense Levels (§3D1.4)

Total of 2 units = 2 additional offense levels

26 (higher group (Robbery 2))

+ 2 additional offense levels

28 combined offense level





Scenario 11



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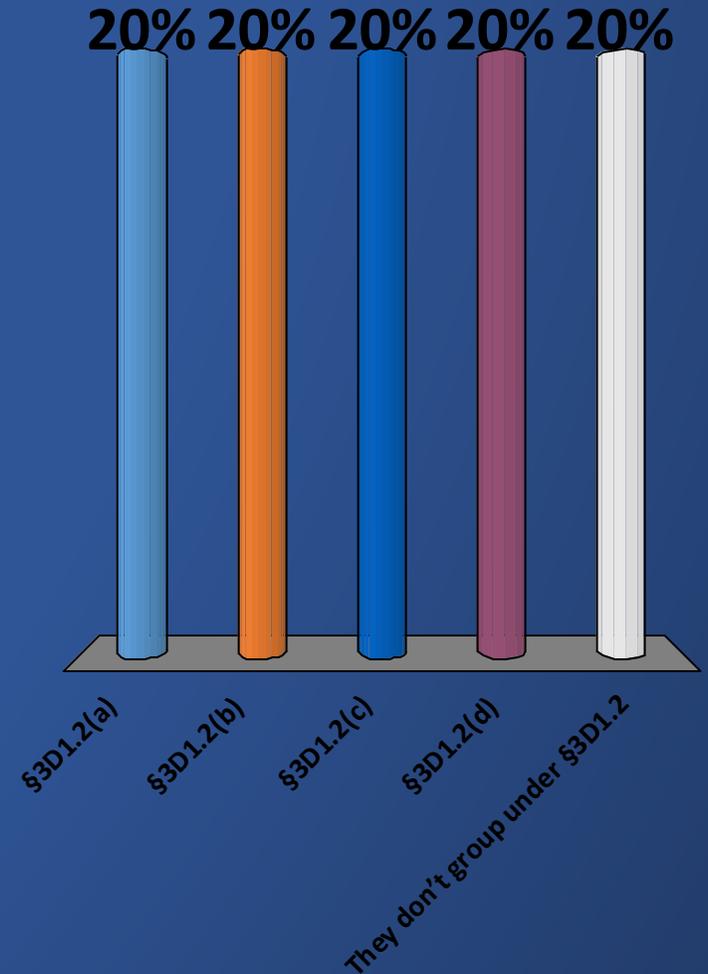
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Scenario 11: Under which rule do these counts group?

- A. §3D1.2(a)
- B. §3D1.2(b)
- C. §3D1.2(c)
- D. §3D1.2(d)
- E. They don't group under §3D1.2





Scenarios 12 – 13

Using Multiple Rules in a Single Case



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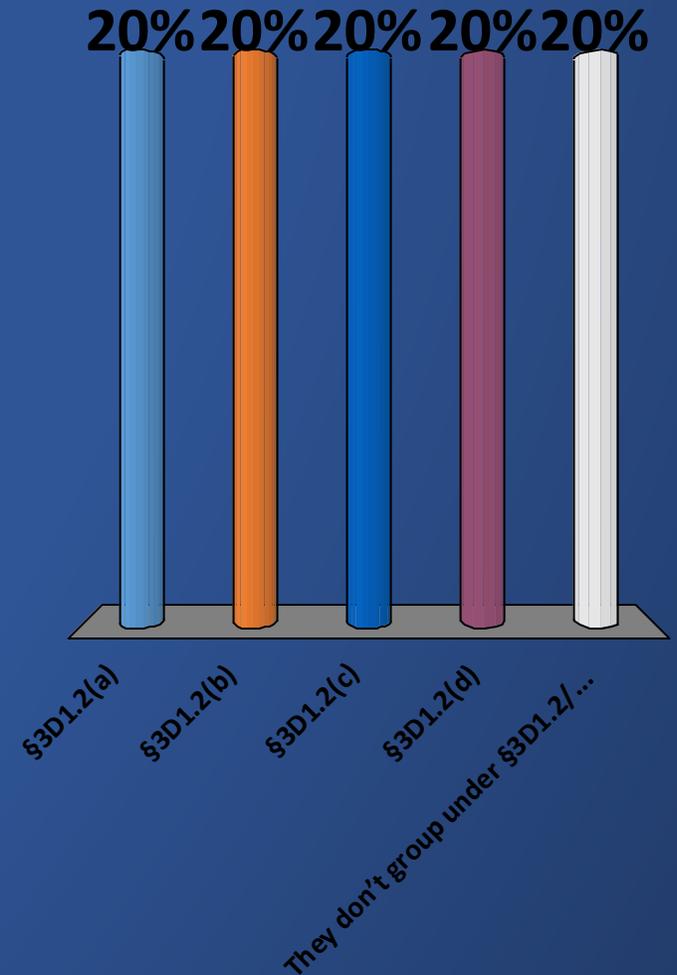
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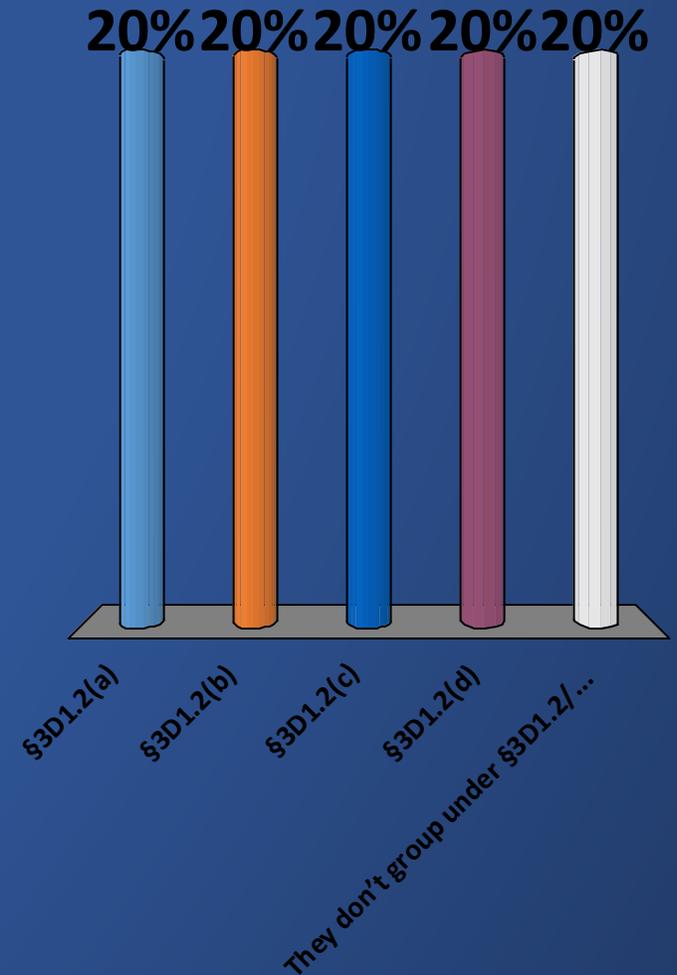
Scenario 12: Which rules apply in this scenario? (You may choose more than one.)

- A. §3D1.2(a)
- B. §3D1.2(b)
- C. §3D1.2(c)
- D. §3D1.2(d)
- E. They don't group under §3D1.2/assign units



Scenario 13: Which rules apply in this scenario? (You may choose more than one.)

- A. §3D1.2(a)
- B. §3D1.2(b)
- C. §3D1.2(c)
- D. §3D1.2(d)
- E. They don't group under §3D1.2/assign units



How confident are you in your understanding of the grouping rules?

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