Multiple Counts Public Data Presentation

Hello, my name is David Rutter, and I am a Research Associate in the Office of Research and Data at the U.S. Sentencing Commission.

On December 12, 2025, the Commission voted to publish proposed amendments to the Federal Sentencing Guidelines for public comment. One of these proposals would simplify the procedure for determining the single offense level for cases involving multiple counts.

The Commission is seeking public comment on whether to promulgate this amendment.

In this presentation, the Commission provides information to assist the public in providing comment on the amendment.

During this presentation, I will discuss three categories of data that are relevant to the proposed amendment.

First, I will discuss information on the application of the current multiple count rules using fiscal year 2024 data.

Second, I will discuss information on the cases impacted by the current multiple count adjustment, including a comparison of demographic information for the individuals sentenced in these cases against all sentenced individuals in fiscal year 2024.

And third, I will discuss the estimated impact of the proposed amendment.

The guidelines generally require a single, combined offense level in each case.

The rules for doing so when the case involves "multiple counts" are found in Chapter 3, Part D of the *Guidelines Manual*.

These rules applied to about one fifth of the nearly 60,000 cases sentenced in fiscal year 2024 with complete guideline application information.

It's important to note, that while the term "multiple counts" closely corresponds to "multiple counts of conviction," these terms are not synonymous.

On one hand, the multiple count rules do not apply to all cases with multiple counts of conviction because offenses requiring mandatory, consecutive prison terms, such as 18 U.S.C. § 924(c), as well as convictions under 18 U.S.C. § 1028A, are excluded from the multiple count rules.

On the other hand, the multiple count rules apply to a case with only one count of conviction when the guidelines require "pseudo-counts," an informal term for treating additional conduct as if it were a separate count of conviction.

Thus, the nearly 11,000 cases involving multiple counts exclude some cases involving multiple counts of conviction and include some cases involving a single count of conviction.

Of the nearly 11,000 cases where the multiple count rules applied in fiscal year 2024: More than half involved 2 counts of conviction; 15 percent involved 3 counts of conviction; 7 percent involved 4 counts of conviction; and 12 percent involved 5 or more counts of conviction; 5 percent involved one count of conviction but included pseudo counts.

The multiple count rules proceed in three steps: (1) grouping closely related counts, as described in §3D1.2; (2) assigning an offense level to each group, as described in §3D1.3; and (3) determining the combined offense level using the unit system, as described in §3D1.4.

The first step in the process is known as "grouping," and this process is used to determine whether counts are "closely related."

Through this process, a multiple count case will fall into one of three categories: the case will involve only closely related counts; the case will involve only unrelated counts; or the case will involve both closely related and unrelated counts.

In fiscal year 2024, more than three quarters of multiple count cases fell into the first category, that is, the case involved only closely related counts. Less than one fifth of multiple count cases involved only unrelated counts. And seven percent of cases involved both closely related counts and unrelated counts.

Section 3D1.2(a) through (d) provide four different grouping reasons, that is, a basis for concluding that the counts are closely related.

Counts may group based on more than one rationale, but only one is required for grouping. Accordingly, the total percentages described here will exceed 100%.

The most common grouping reason is found in §3D1.2(d). Rule (d) provides that counts are grouped if the offense level is largely determined on the basis of some measure of aggregate harm, such as the total amount of loss or the quantity of a substance involved.

Rule (d) was applied in more than half of multiple count cases where related counts were grouped.

Section 3D1.2(c) was cited as the next most common reason for grouping. Rule (c) provides that counts are grouped if conduct from one count is treated as a specific offense characteristic or Chapter Three adjustment to another count. Nearly a third of grouping cases involved grouping under Rule (c).

Section 3D1.2(a) and (b) applied less frequently. Rule (a) applies when the counts involve the same victim and the same transaction. Rule (b) applies when the counts involve the same victim and related transactions. One-fifth of cases included grouped counts under §3D1.2(a) or (b).

There was insufficient information to determine the grouping reason applied in 14 percent of cases.

In cases involving counts that did not group, that is, when the counts were unrelated, the multiple count rules require the application of units to determine whether, and to what extent, a multiple count adjustment applies.

The group with the highest offense level is assigned one unit, and each additional group is assigned either 1 unit, one half unit, or 0 units.

The number of additional units is based on the relationship between the group with the highest offense level and any remaining groups.

Count groups of comparable seriousness receive 1 additional unit, count groups of somewhat comparable seriousness receive one half unit, and count groups of incomparable seriousness receive no units.

In fiscal year 2024, 23% of cases involving unrelated counts involved a total of one unit; 15% of cases involved 1.5 units; 34% of cases involved two units; 13% of cases involved between 2.5 and 3 units; 9% of cases involved 3.5 to 5 units; 6% of cases involved more than five units.

The number of units assigned determines whether, and to what extent, a multiple count adjustment applies.

A total of 1 unit corresponds to no offense level increase, 1.5 units corresponds to an increase of one offense level, 2 units corresponds to an increase of two offense levels, between 2.5 and 3 units corresponds to an increase of three offense levels, between 3.5

and 5 units corresponds to an increase of four offense levels, and more than 5 units corresponds to an increase of five offense levels.

In fiscal year 2024, of the more than 2,600 cases involving unrelated counts, a little more than 2,000 cases were subject to a multiple count adjustment: 23% of cases involving unrelated counts did not receive an offense level increase; 15% of cases involving unrelated counts received a 1-level increase; 34% of cases involving unrelated counts received a 2-level increase; 13% of cases involving unrelated counts received a 3-level increase; 9% of cases involving unrelated counts received a 4-level increase; 6% of cases involving unrelated counts received a 5-level increase.

Although these roughly 2,000 cases were subject to a multiple count adjustment, this adjustment did not impact the final offense level in every case.

In a little more than 200 cases, or 12%, the multiple count adjustment did not impact the final offense level.

Of the 235 cases that were not impacted by a multiple count adjustment, roughly one quarter were also subject to a Chapter 4 enhancement, such as Career Offender, armed career criminal, or §4B1.5(a), that was greater than the combined Chapter 2 and 3 offense level calculation.

The remaining three quarters of the cases would have had a final offense level equal to or greater than 43 even if a multiple count adjustment did not apply.

Almost half of the 235 were subject to an offense level enhancement under section §4B1.5(b).

The presentation will continue by describing the 1,797 cases impacted by the current multiple count adjustment.

The Commission compared the demographic information for individuals impacted by the multiple count adjustment against all sentenced individuals.

Individuals impacted by the multiple count adjustment are most commonly black, making up more than one third of all individuals, compared to 24 percent of the total caseload. About one fifth of these individuals are Hispanic, compared to 50 percent of the total caseload.

The individuals impacted by the multiple count adjustment are overwhelmingly male, similar to the total caseload.

These individuals are also overwhelmingly U.S. citizens, compared to 65 percent of the total caseload.

The average age of these individuals is 37 years old, similar to the total caseload at an average of 38 years old.

The criminal history category assigned to these individuals is similar to the total caseload, as nearly half of individuals are assigned criminal history category 1, while one quarter are assigned the highest criminal history categories 4 through 6.

With regard to offense characteristics, individuals impacted by offense level enhancements under section §3D1.4, more frequently had a weapon or firearm involved in their offense.

40 percent of these individuals had a weapon or firearm involved in their offense conduct, compared to 13 percent of all individuals sentenced in fiscal year 2014.

In addition, these individuals were convicted under a statute carrying a mandatory minimum at nearly double the rate of the total caseload.

Individuals impacted by the multiple count adjustment were also more likely to be convicted at trial than the total caseload.

In fiscal year 2024, 97% of all sentenced individuals in the total caseload pleaded guilty, compared to 90 percent of those impacted by the current multiple count adjustment.

The Commission analyzed the impact of the current multiple count adjustment on the guideline minimum applicable at sentencing.

The types of crime presented are the most frequently occurring among cases impacted by the multiple count adjustment.

For each row, data is presented on the average guideline minimum without application of the current multiple count rules and then the average guideline minimum reflecting the application of the rules.

For all cases impacted by the multiple count adjustment, the average guideline minimum was increased by 28 months – or 16% - as a result of the adjustment.

The impact ranges from 66 months – or 21% - for cases involving sexual abuse to 22 months – or 14% - for cases involving robbery.

Individuals impacted by the multiple count adjustment were sentenced within the guideline range less frequently, as 35 percent of such individuals were sentenced within range compared to 45 percent of the total caseload.

The average sentence for these individuals – 138 months - was nearly 3 times longer than the average for the total caseload.

The Commission also examined the relationship between the sentencing guidelines applied for each unrelated count group.

The Commission first did so by examining whether the unrelated groups involved only the same sentencing guideline or different sentencing guidelines.

Of the 1,797 cases analyzed, nearly half included only multiple groups of the same sentencing guideline and accordingly, the other half included multiple groups of different sentencing guidelines.

Nearly half of cases that involved multiple instances of the same sentencing guideline were sentenced under §2B3.1 for robbery, one quarter were sentenced under a Chapter 2 guideline related to sex offenses, and most of the remaining cases included multiple instances of guidelines covering murder, assault or kidnapping.

Cases that involved multiple groups with at least two different sentencing guidelines make up the other half of all cases impacted by the current multiple count adjustment.

The Commission identified over 280 combinations of multiple sentencing guidelines applied in this group of cases.

The most commonly occurring combinations were: (1) a drug trafficking guideline and a firearm guideline, which made up 7% of the cases; (2) an economic guideline and tax guideline, which made up 6% of cases; (3) a guideline covering production of child pornography and trafficking or possession of child pornography, which made up 5% of the cases; (4) a robbery guideline and a firearm guideline, which made up 4% of the cases, and (5) an economic guideline and a firearm guideline, which made up 4% of the cases.

Having covered data on the multiple count rules generally, and specifically on the individuals impacted by the current multiple count adjustment, the presentation will cover data on the potential impact of the proposed amendment.

Before doing so, I want to provide some context and explanation for the proposed amendment itself.

The rules governing multiple counts are complicated. The Commission has received public comment requesting simplification of these rules. The Commission also receives hundreds of calls every year with questions from practitioners about multiple count rules application and routinely trains practitioners on this topic. Despite these efforts, the Commission continues to observe application errors, potentially resulting in unwarranted sentencing disparities.

The proposed amendment therefore aims to simplify these rules in an outcome neutral way, and the proposal was developed, in part, by focusing on the cases which are currently impacted by the multiple count adjustment.

As discussed earlier, many of the cases currently receiving a multiple count adjustment have convictions for a handful of offenses that fall under the same sentencing guideline, and cases that received the adjustment for counts that fall under different guidelines did so in hundreds of different combinations.

The new multiple count adjustment in the proposed amendment therefore assigns offense level increases to cases where the counts involve the application of the same sentencing guidelines, and the assignment of offense levels corresponds to the average increase by count that such cases actually received at sentencing in fiscal yar 2024.

However, differences remain between the current rules and the proposed amendment; therefore, the Commission conducted an analysis to estimate the proposal's potential impact.

The proposed amendment would replace the five guidelines in Chapter Three, Part D of the Guidelines Manual with a single guideline at §3D1.1 that provides all the steps necessary to determine the single offense level for multiple counts.

The revised §3D1.1 would contain four subsections.

New subsection (a) provides that, if multiple counts involve the same guideline and the guideline is listed therein, the offense level for this group of counts is determined using the combined offense behavior taken as a whole.

The guidelines listed in new subsection (a) are the same guidelines that require aggregation under current §3D1.2(d).

This provision would apply, for example, to a case with multiple counts of drug trafficking, which uses §2D1.1.

This guideline is listed in new subsection (a). The offense level for the drug trafficking counts would be determined by applying §2D1.1, one time, based on the aggregate relevant conduct for all drug trafficking counts.

As such, new subsection (a) maintains the current approach for aggregate harm offenses as set forth in current §3D1.3(b).

New subsection (b) provides that, if multiple counts involve the same guideline and the guideline is listed therein, the offense level for each count is calculated separately and an adjustment based on the number of counts applies to the count in this group resulting in the highest offense level.
The guidelines listed in new subsection (b) cover offenses against a person, offenses that frequently result in a multiple count increase under the current §3D1.4, and six guidelines that currently contain instructions providing a multiple count adjustment under certain circumstances.

This new provision would apply, for example, to a case with two counts of robbery, which uses §2B3.1. Each robbery count would be calculated separately and then an adjustment based on the number of counts would be applied to the robbery count resulting in the highest offense level.

To determine the adjustment, the Commission examined the average offense level increase by number of counts using one of the listed guidelines. The increases in the proposed amendment correspond with those averages.

New subsection (c) sets forth how to determine the offense level for all counts, including the group of counts covered by the first two rules discussed.

New subsection (c) requires the use of the offense level from the count or group of counts (as determined under the first two rules) resulting in the highest offense level.

As a result, no adjustment applies based solely on counts using different guidelines.

This rule would apply, for example, to one count of drug trafficking, which uses §2D1.1, and one count of robbery, which uses §2B3.1. Each count would be calculated separately and the count resulting in the highest offense level would be the offense level for all counts of conviction.

New subsection (d) retains the provisions of current §3D1.1(b) identifying certain types of convictions, such as § 924(c) and § 1028(a), that are excluded from these rules.

As discussed earlier in the presentation, in fiscal year 2024, the multiple count rules applied in nearly 11,000 cases. The Commission analyzed these cases to estimate the impact of the proposed amendment on the original final offense level at sentencing for these cases.

Based on this analysis, the Commission estimates that 85% of the 10,807 multiple counts would remain unchanged if these cases were sentenced under the proposed amendment.

The proposed amendment would result in an increase to the original offense level in 8 percent of cases and a decrease in offense level in 7 percent of cases.

The most common crime type among these cases is drug trafficking, accounting for 42% of all multiple count cases. Under the proposed amendment, 3 percent of drug trafficking cases would have a lower offense level under the proposed amendment and no drug trafficking cases would have a higher offense level under the proposed amendment.

For all 10,807 cases, the Commission estimates that on average the proposed amendment would not result in any change to the offense level at sentencing.

In cases where the proposed amendment would increase the final offense level, the Commission estimates the average offense level increase for the roughly 800 cases would be 1 offense level.

In cases where the proposed amendment would decrease the final offense level, the Commission estimates the average offense level decrease for the roughly 800 cases would be 2 offense levels.

The Commission also estimated the average offense level decreases and increases by offense type.

The average offense level increase would be one offense level for all crime types with cases impacted by an increase.

The average offense level decrease would range from one to two levels depending on the crime type.

The Commission previously presented demographic information for individuals impacted by the current multiple count adjustment.

A comparison of the demographic information for individuals impacted by the multiple count adjustment under the proposed amendment shows a similar distribution of race and ethnicity, gender, and citizenship.

Finally, the Commission analyzed the impact of the proposed amendment on the total federal criminal caseload.

Of the 58,526 cases analyzed, the proposed amendment would have no impact in over 97 percent of cases.

This concludes the data presentation. For information on the proposed amendment please visit the United States Sentencing Commission's website at ussc.gov.

The other proposed amendments and issues for comment can also be found on the Commission's website.

Comments may be submitted to the Commission electronically at comment.ussc.gov or by mail at the address here. The Commission is accepting public comment through February 10, 2026.

Thank you.