

Approaches in Multiple Counts

1. Grouping (§3D1.2)
 - Group under “rule” (d)
 - Group under “rules” (a), (b), or (c)
2. Incremental Increases (§3D1.4)
 - Assignment of units
 - Additional offense levels

Impact of § 924(c) on Multiple Counts

§§3D1.1(b) & 5G1.2(a)

- § 924(c) count excluded from grouping with any other count
- Sentence for § 924(c) count imposed independently

Grouping Rules

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

Offenses Included at §3D1.2(d):

- Drug trafficking
- Fraud, theft, embezzlement
- Money laundering
- Firearms
- Counterfeiting
- Alien smuggling
- Trafficking/Possession Child Pornography
- Other similar offenses

Offenses Excluded at §3D1.2(d):

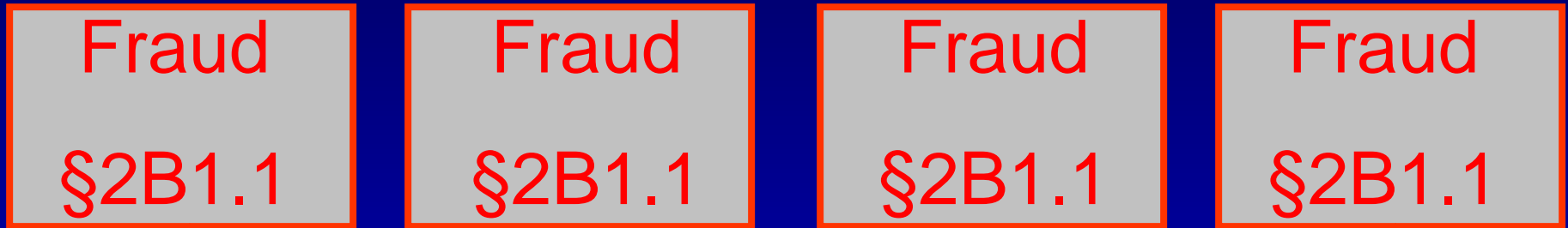
- Robbery
- Assault
- Murder
- Kidnapping
- Criminal sexual abuse
- Extortion
- Blackmail
- Burglary
- Production of Child Pornography
- Other similar offenses

Grouping under “Rule” (d)

“If the offense guidelines in Chapter Two base the offense level primarily on the amount of money or quantity of substance involved.....add the numerical quantities and apply the pertinent offense guideline....for the conduct taken as a whole.”

Grouping under “Rule” (d)

Example:



One application with the offense level for the group based on an aggregate

Grouping Under “Rule” (d)

§3D1.3(b), App. Note 3

If counts use the same (or similar) guideline,

and

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

Using the aggregate quantity and combined offense behavior, apply the guidelines as if for a single count application.

Impact of Multiple Counts of Conviction upon Application for Offenses Grouping under Rule (d)

- Unrelated offenses may group
- Separate and distinct courses of conduct, common schemes or plans may be used in a single application

Example



Step 1: Grouping “Rules” (a), (b), or (c)

If counts “group” under
§3D1.2(a), (b), or (c):

Apply the guidelines separately
to get an offense level for each
count.

Use the highest offense level.

Application of Multiple Counts under Rules (a), (b), or (c)

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

§3D1.2(a)

“When counts involve the same victim and the same act or transaction.”

Grouping under Rule (a)

**Possession of
Child
Pornography
§2G2.2
OL 35**

**Production of
Child
Pornography
§2G2.1
OL 44**

**Offense Level 44
for the group
(Cross ref. group under “rule” (a))**

§3D1.2(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.”

Grouping under Rule (b)

**Illegal Reentry
§2L1.2**

OL 24

**Document fraud
§2L2.2**

OL 10

**Offense Level 24
for the group**

§3D1.2(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)

**Robbery
(of bank)
§2B3.1
OL 24**

**Assault
(of teller)
§2A2.2
OL 17**

**Offense Level 24
for the group**

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2. Incremental Increases

- Assignment of units
- Additional offense levels

Step 2: Incremental Increases

If more than one group:

- Compare the offense level of the highest group to the offense levels of the other groups
- Increase the offense level of the highest group according to a guideline table

Incremental Increases

Example:

**5 counts of
fraud**

OL 23

**Robbery /
Assault
(of same
victim)**

OL 24

Robbery

OL 28

Assignment of Units (§3D1.4)

| | |
|----------------------------------|-----|
| Highest Offense Level (or Equal) | 1 |
| 1-4 Levels Less Serious | 1 |
| 5-8 Levels Less Serious | 1/2 |
| 9 or More Levels Less Serious | 0 |

Assignment of Units (§3D1.4)

| | | |
|----------------------|----------------------------------|------------------------|
| Fraud Group OL 23 | Robbery / Assault Group OL 24 | Robbery Group OL 28 |
|----------------------|----------------------------------|------------------------|

of units:

1/2 unit

1 unit

1 unit

Total Units

2 1/2

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 |

Assignment of Units (§3D1.4)

Total of $2\frac{1}{2}$ units = 3 additional offense levels

28 (highest group (robbery))
+ 3 additional offense levels
31 combined offense level

Drugs & Felon in Possession of a Firearm & Use of Firearm During Crime of Violence

Count 1:
§2D1.1

Count 2:
§2K2.1

Count 3:
§2K2.4

60 mos.
consecutive



§ 924(c) count
runs
consecutively to
all counts

Drugs & Felon in Possession of a Firearm & Use of Firearm During Crime of Violence

Count 1:
§2D1.1
 $22 + \cancel{2} = 22$

Count 2:
§2K2.1
 $24 + \cancel{4} = 24$
(CR = 22)

Count 3:
§2K2.4

60 mos.
consecutive

Offense Level = 24

Group counts 1 and 2
under §3D1.2(c)

§ 924(c) count
runs
consecutively to
all counts

Drugs & Felon in Possession of a Firearm & Use of Firearm During Crime of Violence

Count 1:
§2D1.1
 $30 + \cancel{2} = 30$

Count 2:
§2K2.1
 $24 + \cancel{4} = 24$
(CR = 30)

Count 3:
§2K2.4
60 mos.
consecutive

Offense Level = 30

Group counts 1 and 2
under §3D1.2(a)

§ 924(c) count
runs
consecutively to
all counts

Drug consp. & First Degree Murder & Attempted Murder

Count 1:
§2D1.1
38+2+40
(CR=43)

Count 2:
§2A1.1
OL 43

Count 3:
§2A2.1
OL 30

Offense Level = 43

OL 30

Group counts 1 and 2
under §3D1.2(a)

Felon in Possession of a firearm & 2 counts of kidnapping

Count 1:
§2K2.1
24+4= 28

Count 2:
§2A4.1
32+2=34

Count 3:
§2A4.1
OL 32

Offense Level = 34

OL 32

Group counts 1 and 2
under §3D1.2(c)

END