

Grouping of Multiple Counts

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SENTENCING TABLE (in months of imprisonment)

Criminal History Category (Criminal History Points)

Offense Level	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
	0-6	0-6	0-6	0-6	0-6	0-6
	0-6	0-6	0-6	0-6	0-6	1-7
	0-6	0-6	0-6	0-6	2-8	3-9
	0-6	0-6	0-6	2-8	4-10	6-12
Zone A	0-6	0-6	1-7	4-10	6-12	9-15
	0-6	1-7	2-8	6-12	9-15	12-18
	0-6	2-8	4-10	8-14	12-18	15-21
	0-6	4-10	6-12	10-16	15-21	18-24
Zone B	4-10	6-12	8-14	12-18	18-24	21-27
	6-12	8-14	10-16	15-21	21-27	24-30
Zone C	8-14	10-16	12-18	18-24	24-30	27-33
	10-16	12-18	15-21	21-27	27-33	30-37
	12-18	15-21	18-24	24-30	30-37	33-41
	15-21	18-24	21-27	27-33	33-41	37-46
	18-24	21-27	24-30	30-37	37-46	41-51
	21-27	24-30	27-33	33-41	41-51	46-57
	24-30	27-33	30-37	37-46	46-57	51-63
	27-33	30-37	33-41	41-51	51-63	57-71
	30-37	33-41	37-46	46-57	57-71	63-78
	33-41	37-46	41-51	51-63	63-78	70-87
	37-46	41-51	46-57	57-71	70-87	77-96
	41-51	46-57	51-63	63-78	77-96	84-105
	46-57	51-63	57-71	70-87	84-105	92-115
	51-63	57-71	63-78	77-96	92-115	100-125
	57-71	63-78	70-87	84-105	100-125	110-137
	63-78	70-87	78-97	92-115	110-137	120-150
Zone D	70-87	78-97	87-108	100-125	120-150	130-162
	78-97	87-108	97-121	110-137	130-162	140-175
	87-108	97-121	108-135	121-151	140-175	151-188
	97-121	108-135	121-151	135-168	151-188	168-210
	108-135	121-151	135-168	151-188	168-210	188-235
	121-151	135-168	151-188	168-210	188-235	210-262
	135-168	151-188	168-210	188-235	210-262	235-293
	151-188	168-210	188-235	210-262	235-293	262-327
	168-210	188-235	210-262	235-293	262-327	292-365
	188-235	210-262	235-293	262-327	292-365	324-405
	210-262	235-293	262-327	292-365	324-405	360-life
	235-293	262-327	292-365	324-405	360-life	360-life
	262-327	292-365	324-405	360-life	360-life	360-life
	292-365	324-405	360-life	360-life	360-life	360-life
	324-405	360-life	360-life	360-life	360-life	360-life
	360-life	360-life	360-life	360-life	360-life	360-life
	life	life	life	life	life	life

Multiple Counts Rationale

- Determine a single offense level
- Prevent “double-counting”
- Provide incremental punishment
- Limit prosecutorial impact

Steps in Multiple Counts

1. Grouping

- Group under “rule” (d)
- Group under “rules” (a), (b), or (c)

2. Incremental Increases

- Assignment of units
- Additional offense levels

Grouping Rules

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

Step 1: Grouping “Rule” (d)

If counts use the same (or similar)
guideline,

and

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

Apply the guidelines as if for a single
count application.

Offenses Included at §3D1.2(d):

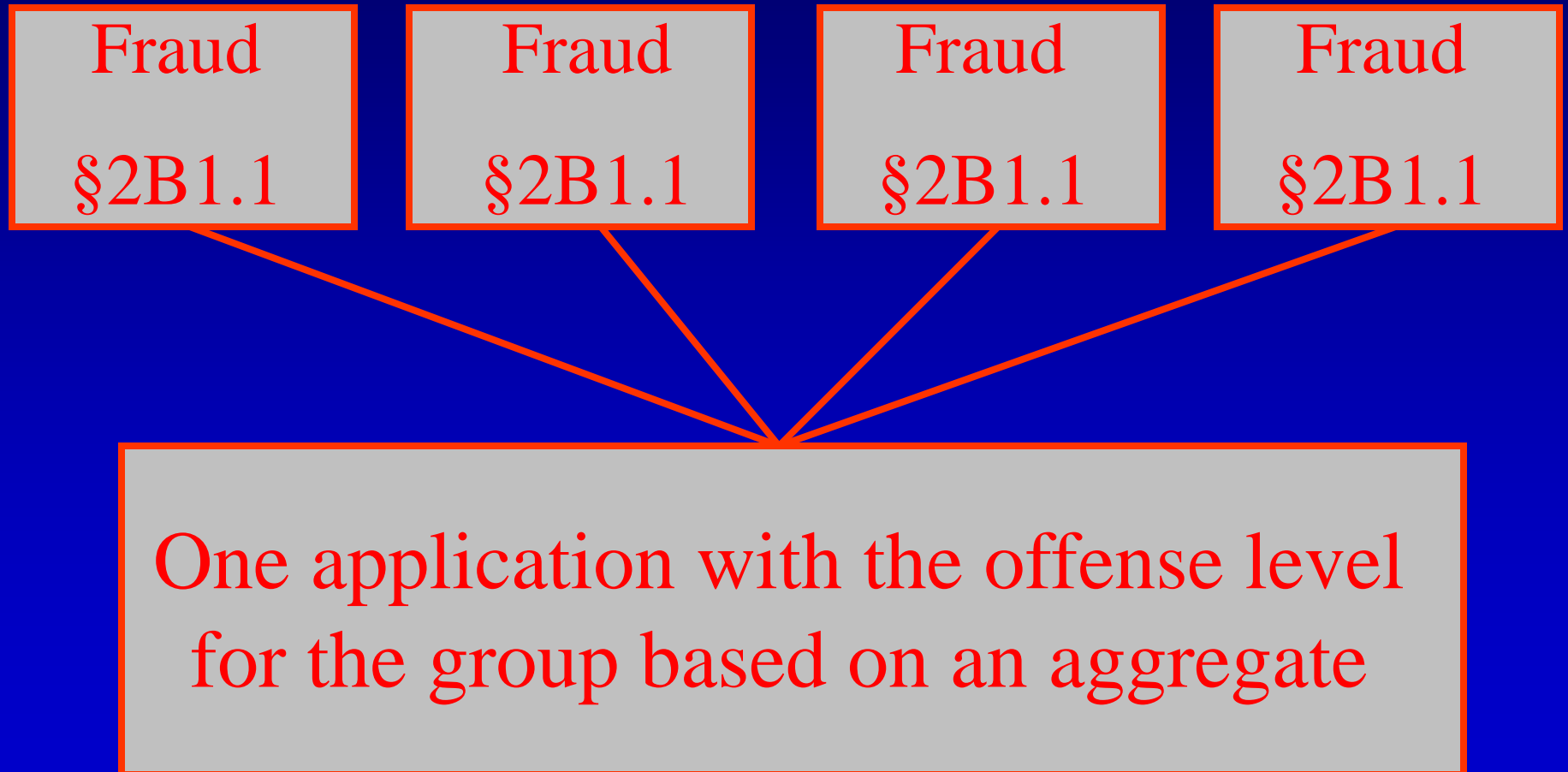
- Drug trafficking
- Fraud, theft, embezzlement
- Money laundering
- Firearms
- Counterfeiting
- Alien smuggling
- Trafficking/Possession Child Pornography
- Other similar offenses

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)

Example:



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 Rule (d) Multiple Counts on Relevant Conduct

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



Steps in Multiple Counts

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 “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.”

§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 (a)

**Aggravated
Assault
(of victim)**

§2A2.2

OL 20

**Robbery
(of victim)**

§2B3.1

OL 23

**Offense Level 23
for the group**

Grouping under Rule (b)

Illegal Reentry

§2L1.2

OL 16

Document fraud

§2L2.2

OL 14

**Offense Level 16
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**

Steps in Multiple Counts

1. Grouping

- Group under “rule” (d)
- Group under “rules” (a), (b), or (c)

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 $\frac{1}{2}$

9 or More Levels Less Serious 0

Assignment of Units (§3D1.4)

	Fraud Group	Robbery / Assault Group	Robbery Group
	OL 23	OL 24	OL 28
# of units:	1/2 unit	1 unit	1 unit
Total Units			<u>2 1/2</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

Assignment of Units (§3D1.4)

Total of 2½ units = 3 additional offense levels

28 (highest group (robbery))
+ 3 additional offense levels

31 combined offense level

Multiple Counts and Acceptance of Responsibility

- Acceptance of responsibility is determined only after application of the guidelines for multiple counts has established a single combined adjusted offense level
- Acceptance (the reduction of 2 or 3 offense levels) is based upon consideration of all counts

END