

Grouping of Multiple Counts

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Thursday, May 19 2:45 - 4:15p.m.

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:

Fraud

2B1.1

Fraud

2B1.1

Fraud

2B1.1

Fraud

2B1.1

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 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



Scenario # 1

Rule (d) grouping

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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**

Scenarios 2, 3 and 4

Rules (a), (b), and (c)

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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	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 $2\frac{1}{2}$ 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

Steps in Multiple Counts

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END