

2016
Annual National
Seminar

Relevant Conduct / §1B1.3: 2016 Annual National Seminar

This provision, located at §1B1.3, specifies the conduct for which a defendant may be held accountable in the determination of the offense level. The conduct need not have been formally charged or proved at trial, so long as the sentencing court finds the facts by a preponderance of the evidence. Relevant conduct may include the defendant's conduct as well as the conduct of others under certain circumstances.

Key Points about Relevant Conduct

- Serves as a “gatekeeper” in determining the conduct to be considered in the application of the existing guideline factors.
- Will limit the conduct that can be used in guideline application. However, for purposes of sentencing, generally all information can be used. (See 18 U.S.C. § 3661, §1B1.4.)
- Sentencing accountability is not always the same as criminal liability. In other words, a person convicted of conspiracy may not necessarily be held accountable for the whole conspiracy under the provisions of relevant conduct.
- Relevant conduct determines application of the base offense levels, specific offense characteristics, and cross references in Chapter Two and the adjustments in Chapter Three.
- The determination of the relevant conduct for Chapters Two and Three of a particular offense will also impact the determination of a single offense level for multiple counts of conviction (Chapter 3, Part D), the calculation of criminal history points (Chapter 4), and adjustments for undischarged terms of imprisonment (§5G1.3).
- Relevant conduct is unaffected by jurisdiction and the statute of limitations.

Key Terms

Defendant – acts committed, aided, abetted, counseled, commanded, induced, procured or willfully caused by the defendant

Offense – the offense of conviction and all relevant conduct

Jointly Undertaken Criminal Activity – a criminal plan, scheme, endeavor, or enterprise undertaken

by the defendant in concert with others, whether or not charged as a conspiracy

Same Course of Conduct – acts or offenses sufficiently connected by similarity, regularity, and temporal

proximity to each other to warrant the conclusion that they are part of a single episode, spree, or ongoing series of offenses.

Common Scheme or Plan – acts or offenses substantially connected to each other by at least one common factor, such as common victims, common accomplices, common purpose or similar *modus operandi*



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The Relevant Conduct Analysis is Keyed to the Offense of Conviction, and Requires Determinations of “Who” and “When”

Who:

- Acts committed, aided, abetted, counseled, commanded, induced, procured or willfully caused **by the defendant**; and
- **Acts of others** that:
 - were within the scope of the jointly undertaken criminal activity,
 - in furtherance of that criminal activity, and
 - reasonably foreseeable in connection with that criminal activity

When:

- That occurred **during** the commission of the offense of conviction, **in preparation** for that offense, or to **avoid detection or responsibility** for the offense of conviction
- **Only for offenses listed as included at §3D1.2(d)**, Relevant Conduct includes acts of the defendant and acts of others within the jointly undertaken criminal activity that were the same course of conduct or common scheme or plan as the offense of conviction.

Relevant conduct also includes:

- All harm that resulted from the acts described above, and
- any other information outside of the above analysis that is specified in the applicable guideline.

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The United States Sentencing Commission, an independent agency in the judicial branch of the federal government, was organized in 1985 to develop a national sentencing policy for the federal courts. The resulting sentencing guidelines provide structure for the courts' sentencing discretion to help ensure that similar offenders who commit similar offenses receive similar sentences.