

2017
National
Seminar

Grouping Multiple Counts of Conviction: 2017 Annual National Seminar

When a case involves multiple counts of conviction, the court must determine a single, combined offense level representative of all the counts of conviction. This process is known as “grouping” multiple counts. The grouping rules in Chapter 3, Part D are applied to determine a single, combined, offense level.

Key Points about Grouping Multiple Counts of Conviction:

- The grouping rules in Chapter 3, Part D apply to multiple counts of conviction contained in the same indictment or information, or multiple counts contained in different indictments or informations where sentences are to be imposed at the same time or in a consolidated proceeding.
- The grouping rules do not apply to counts of conviction for which the statute: specifies a term of imprisonment to be imposed and requires that specific term of imprisonment run consecutively to any other count of conviction. Common examples: 18 U.S.C. § 924(c) and 18 U.S.C. §1028A. (See §3D1.1.)
- The grouping rules in §3D1.2 apply to closely related counts that are to be treated as a single, composite harm. One offense level will be used to represent all counts grouped under these rules. When these rules are applied to multiple counts, it is referred to as “grouping.”
- The rules in §3D1.4 apply to counts that represent separate, distinct harms. This provision provides incremental punishment (additional offense levels) for additional criminal conduct. These rules are often referred to as the “assignment of units.”
- Depending upon the specific counts in a particular case, a multiple count case may use: only the grouping rules in §3D1.2, only the assignment of units in §3D1.4, or both.
- Acceptance of Responsibility (§3E1.1) is determined after application of the guidelines to determine a single offense level for multiple counts. A reduction for Acceptance of Responsibility is taken from the single offense level that is determined after all of the grouping rules are applied.

Key Terms

Assignment of Units – the process outlined in §3D1.4, which provides incremental increases (the assignment of additional offense levels) for significant additional criminal conduct that represents separate and distinct harms.

Count Group – the group of closely related counts after application of the grouping rules in §3D1.2. If

there are multiple counts or count groups, the grouping rules will still be applied to determine a single, combined offense level.

Grouping – the process outlined in Chapter 3, Part D to determine a single, combined offense level for multiple counts of conviction. Also refers specifically to the rules in §3D1.2, which dictate the determination of a single offense level for closely related counts of conviction.



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Groups of Closely Related Counts (§3D1.2)

All counts involving substantially the same harm shall be grouped together into a single Group. Counts involve substantially the same harm if:

- (a) Counts involve the same victim and the same act or transaction.
- (b) 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.
- (c) One of the counts embodies conduct that is treated as a specific offense characteristic in, or Chapter 3 adjustment to, the guideline applicable to another count.
- (d) Counts use the same guideline and are included for grouping under this subsection. The most commonly applied guidelines to be grouped under this subsection are:
 - §2B1.1 (Fraud, Theft)
 - §2C1.1 (Bribery)
 - §2D1.1 (Drugs)
 - §2G2.2 (P/R/T Child Pornography)
 - §2K2.1 (Firearms)
 - §2L1.1 (Alien Smuggling)
 - §2S1.1 (Money Laundering)
 - §2T1.1 (Tax Offenses)

Guidelines excluded from grouping under this subsection include:

- All offenses in Chapter Two, Part A (except §2A3.5)
- §2B2.1 (Burglary)
- §2B3.1 (Robbery)
- §2G1.1 (Prostitution)
- §2G2.1 (Production Child Pornography)
- §2L2.2 (Document Fraud)

Determining the Combined Offense Level (§3D1.4)

The combined offense level is determined by taking the offense level applicable to the count/count group with the highest offense level and increasing that offense level by the amount indicated in the following table:

| | | |
|----------------------------------|--------------------|---|
| Total Number of Units | 1 ½ ... +1 | Add to Highest Offense Level |
| | 2 ... +2 | |
| | 2 ½ - 3 ... +3 | |
| | 3 ½ - 5 ... +4 | |
| | More than 5 ... +5 | |

- The count/group with the highest offense level receives one unit.
- Each remaining count/group that is equally serious or 1 to 4 levels less serious than the count/group with the highest offense level receives one unit.
- Each remaining count/group that is 5 to 8 levels less serious than the count with the highest offense level receives one-half unit.
- Any remaining count/group that is 9 or more levels less serious than the count group with the highest offense level does not receive any unit.

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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.