



Multiple Counts: Grouping Multiple Offense Types

Wednesday, May 30, 2018

10:30 am – 12:00 pm



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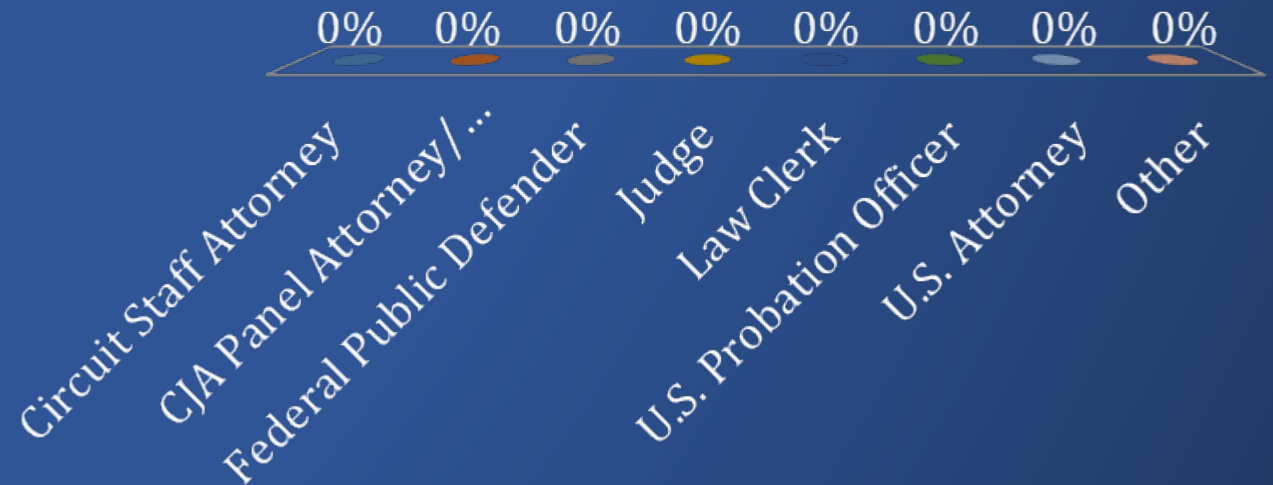
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Who's in the audience?

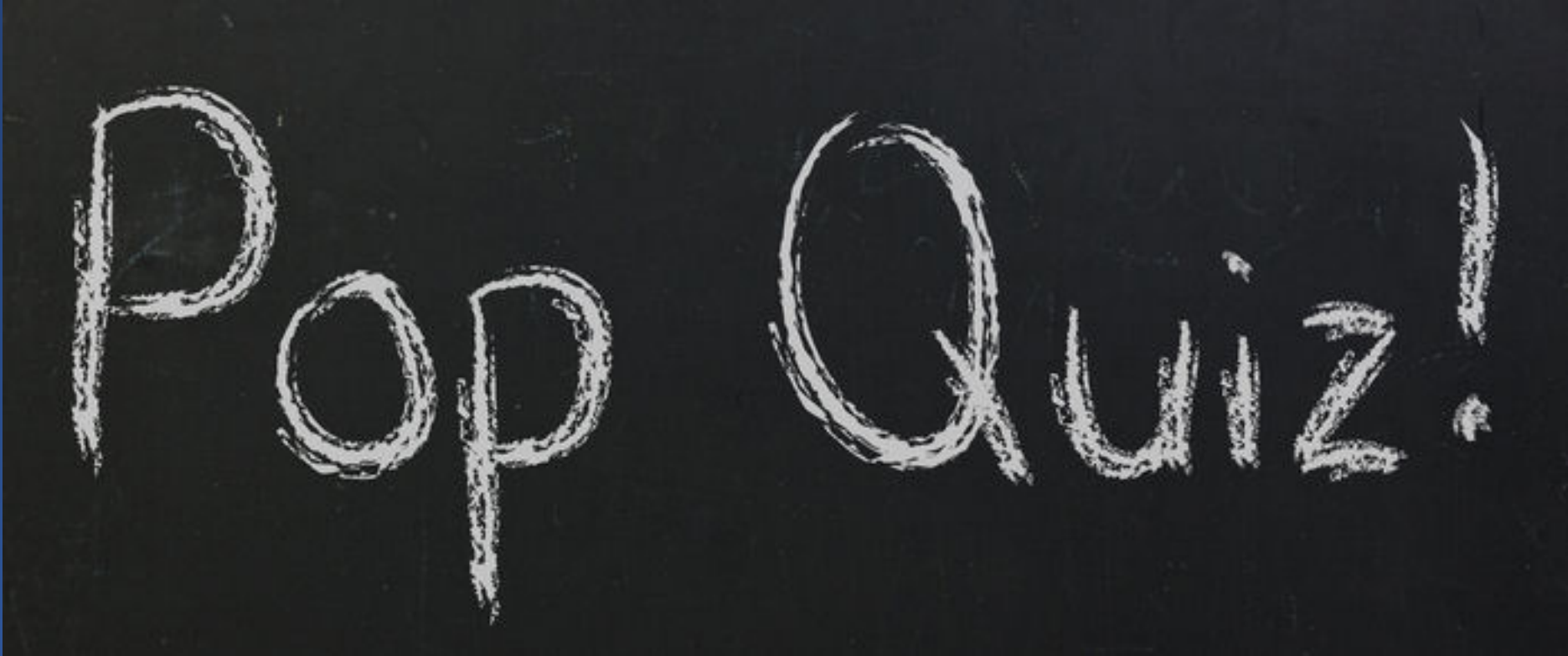
- A. Circuit Staff Attorney
- B. CJA Panel Attorney/
Private Defense Attorney
- C. Federal Public Defender
- D. Judge
- E. Law Clerk
- F. U.S. Probation Officer
- G. U.S. Attorney
- H. Other



Years of experience with federal sentencing?

- A. Less than 2 years
- B. 2 to 5 years
- C. 5 to 10 years
- D. More than 10 years





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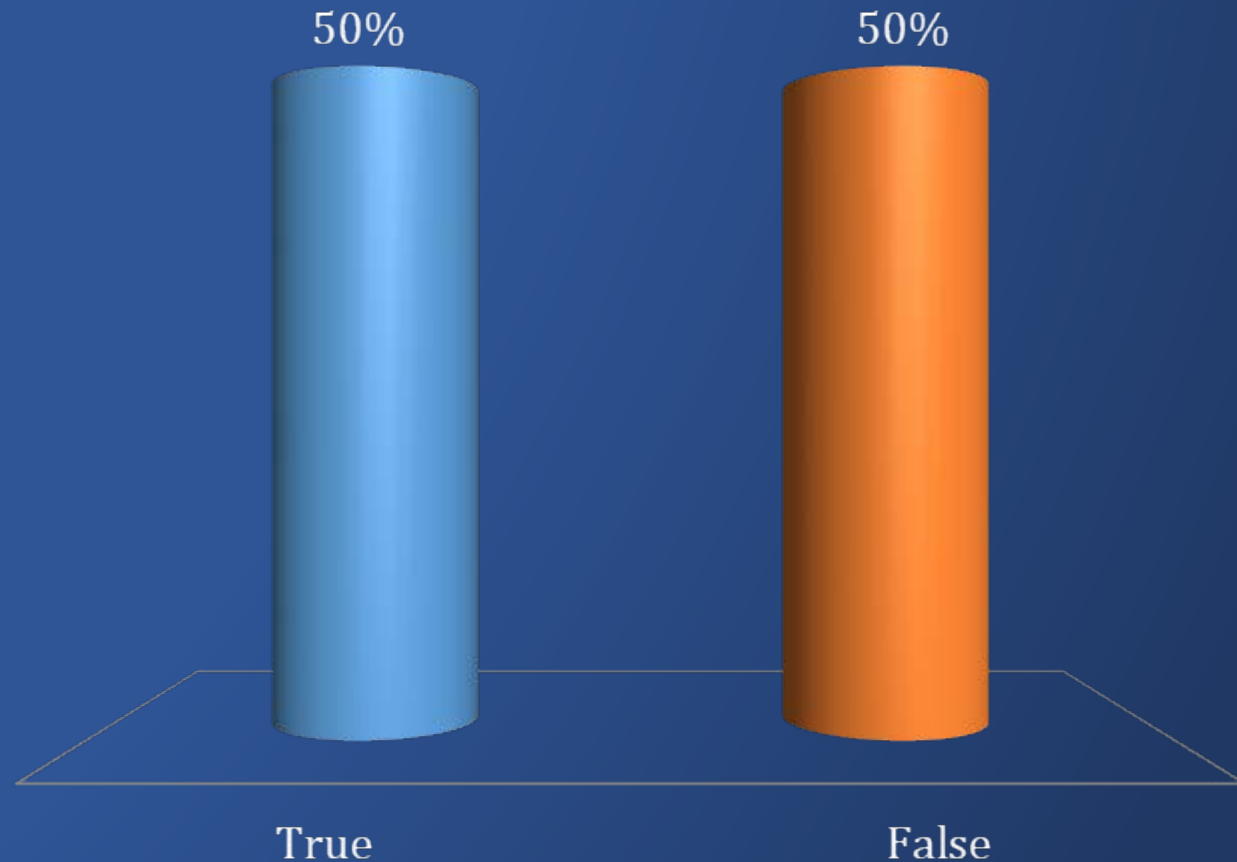
Understanding grouping is the most difficult part of guideline application.

- A. Agree
- B. Somewhat agree
- C. Neither agree or disagree
- D. Somewhat disagree
- E. Disagree



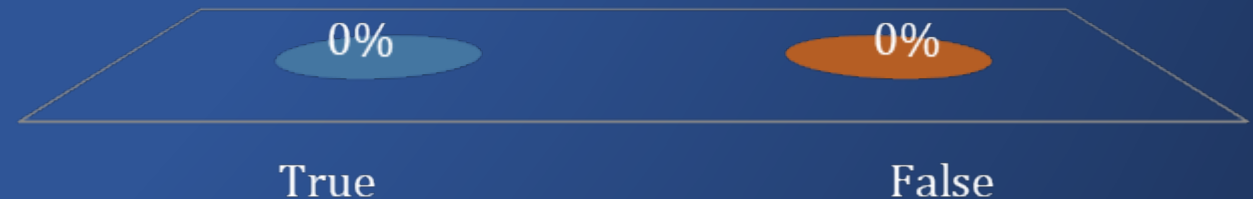
In determining whether counts group, you must first decide whether the counts involve the same harm, regardless of what the rules state at §3D1.2.

- A. True
- B. False



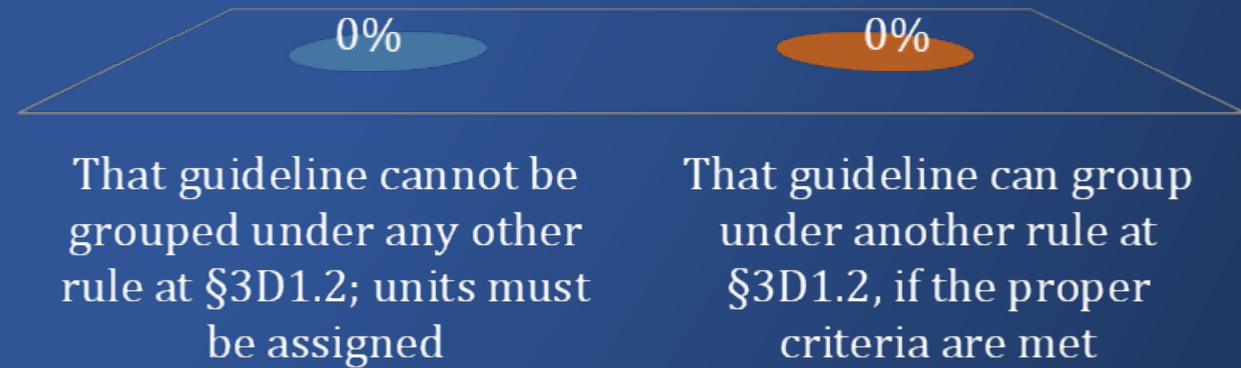
When two different guidelines are listed as “included” at §3D1.2(d), those guidelines must group under §3D1.2(d).

- A. True
- B. False



When a guideline is listed as “excluded” from §3D1.2(d), does that mean that:

- A. That guideline cannot be grouped under any other rule at §3D1.2; units must be assigned
- B. That guideline can group under another rule at §3D1.2, if the proper criteria are met



Today's Objective:

- Demystify the process of **grouping** multiple counts of conviction
- Resources:
 - Discussion
 - Decision Tree
 - Scenarios



What is “Grouping”?

- Grouping is the application of the rules in Chapter 3, Part D to determine a single offense level for defendants convicted of multiple counts



There Are Two Sets of Rules Used to Determine a Single Offense Level

1. “Grouping” (§3D1.2)

- Closely related counts are treated as a single, composite harm
- One offense level represents all counts



There Are Two Sets of Rules Used to Determine a Single Offense Level (cont.)

2. “Assigning Units” (§3D1.4)

- Provides incremental punishment for multiple counts involving separate, distinct harms
- Adds offense levels for additional criminal conduct



Tips for Determining a Single Offense Level for Multiple Counts

- Depending upon the specific counts in a particular case, a multiple count case may use
 - Only the grouping rules at §3D1.2;
 - Only the assignment of units at §3D1.4; or
 - Both the grouping rules (§3D1.2) and the assignment of units (§3D1.4)



Tips for Determining a Single Offense Level for Multiple Counts (cont.)

- Grouping is a process of elimination
 - Start with the grouping rules at §3D1.2.
 - Then, if necessary, move to the assignment of units at §3D1.4.
 - In every multiple counts case, the court **MUST** determine **ONE** offense level representative of all of the counts of conviction



You Don't Have a Choice!

§3D1.2. Groups of Closely Related Counts

All counts involving substantially the same harm shall be grouped together into a single Group. Counts involve substantially the same harm within the meaning of this rule:

- The guideline calculations for the specific counts in a particular case will dictate which grouping rules apply





Decision Tree: Grouping Multiple Counts of Conviction



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Do your counts use the
SAME guideline?

YES

Is that guideline listed as
included under §3D1.2(d)?

NO

Apply the guidelines to each
count of conviction.

NO

- (d) When the offense level is determined largely on the basis of the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm, or if the offense behavior is ongoing or continuous in nature and the offense guideline is written to cover such behavior.



Examples of Chapter Two Guidelines in the Included List at §3D1.2(d)

- Drug trafficking
- Fraud, theft, & embezzlement
- Firearms
- Alien smuggling
- Trafficking/possession of child pornography
- Money laundering
- Tax violations
- Counterfeiting
- Bribery
- Other similar offenses



Specifically excluded from the operation of this subsection are:

all offenses in Chapter Two, Part A (except §2A3.5);

§§2B2.1, 2B2.3, 2B3.1, 2B3.2, 2B3.3;

§2C1.5;

§§2D2.1, 2D2.2, 2D2.3;

§§2E1.3, 2E1.4, 2E2.1;

§§2G1.1, 2G2.1;

§§2H1.1, 2H2.1, 2H4.1;

§§2L2.2, 2L2.5;

§§2M2.1, 2M2.3, 2M3.1, 2M3.2, 2M3.3, 2M3.4, 2M3.5, 2M3.9;

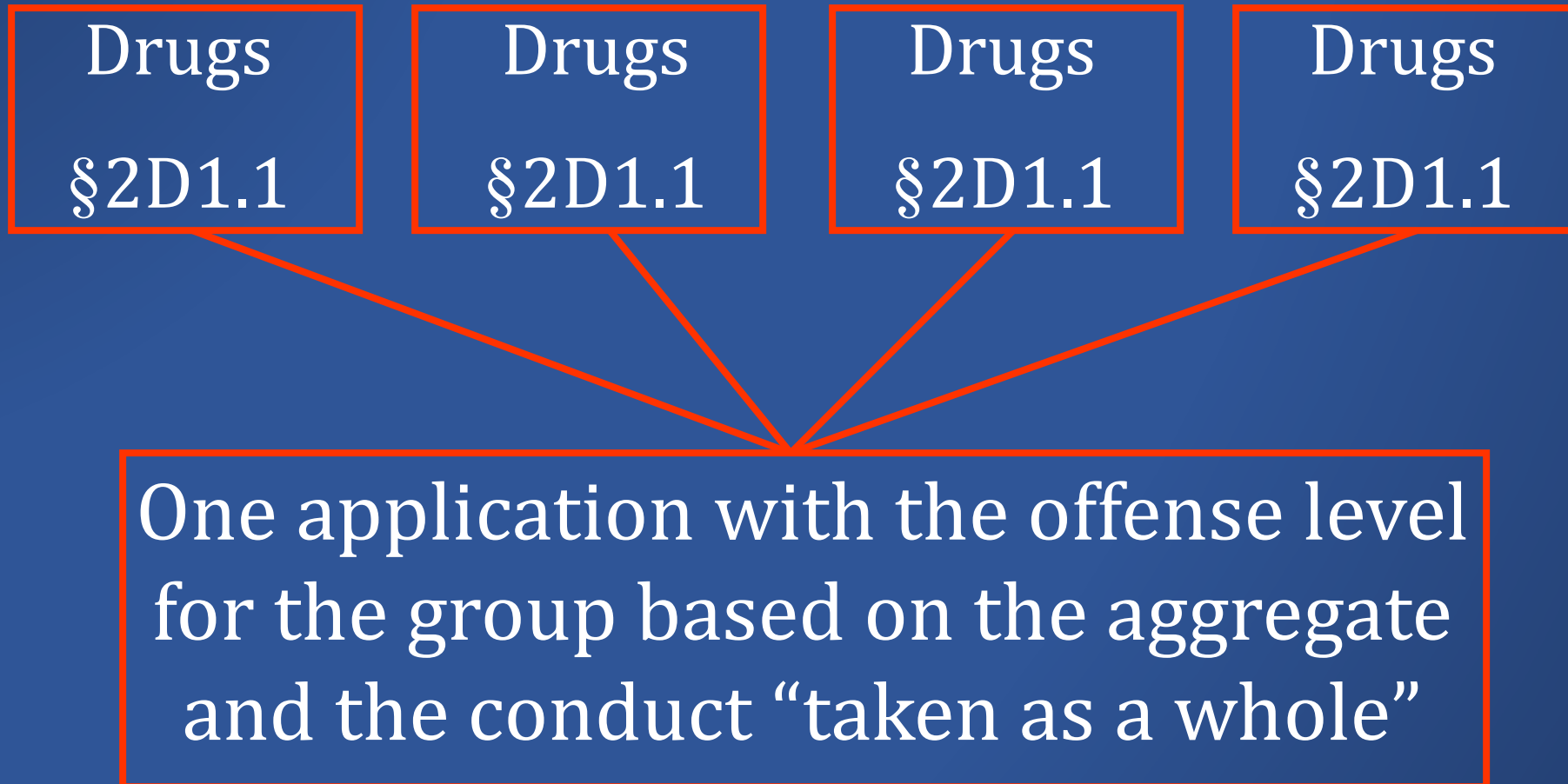
§§2P1.1, 2P1.2, 2P1.3;

§2X6.1.



Grouping under “Rule (d)”

Example:



Do your counts use the
SAME guideline?

YES

Is that guideline listed as
included under §3D1.2(d)?

NO

Apply the guidelines to each
count of conviction.

NO

Application of Multiple Counts that Do Not Group under “Rule (d)”

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



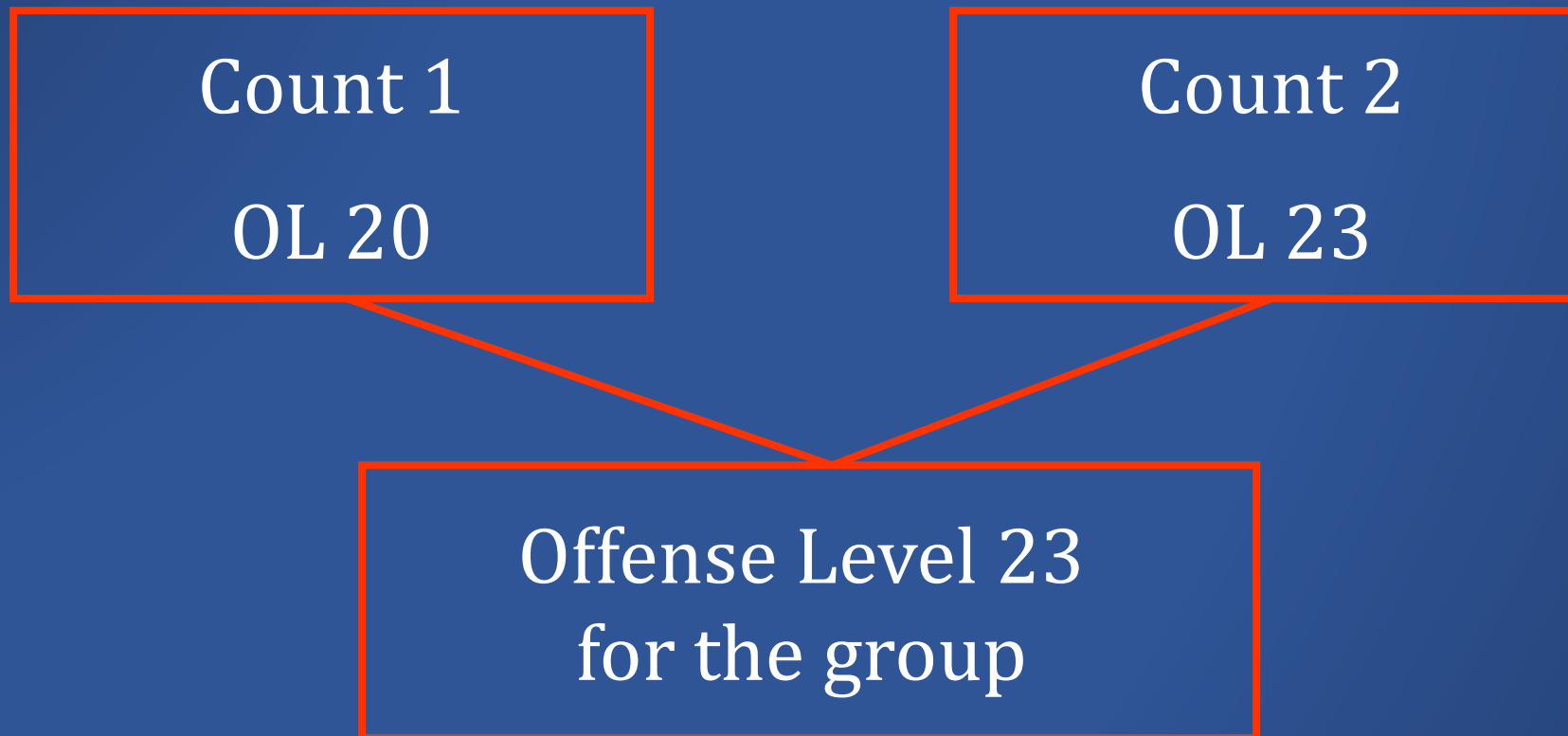
Grouping Closely Related Counts at §3D1.2

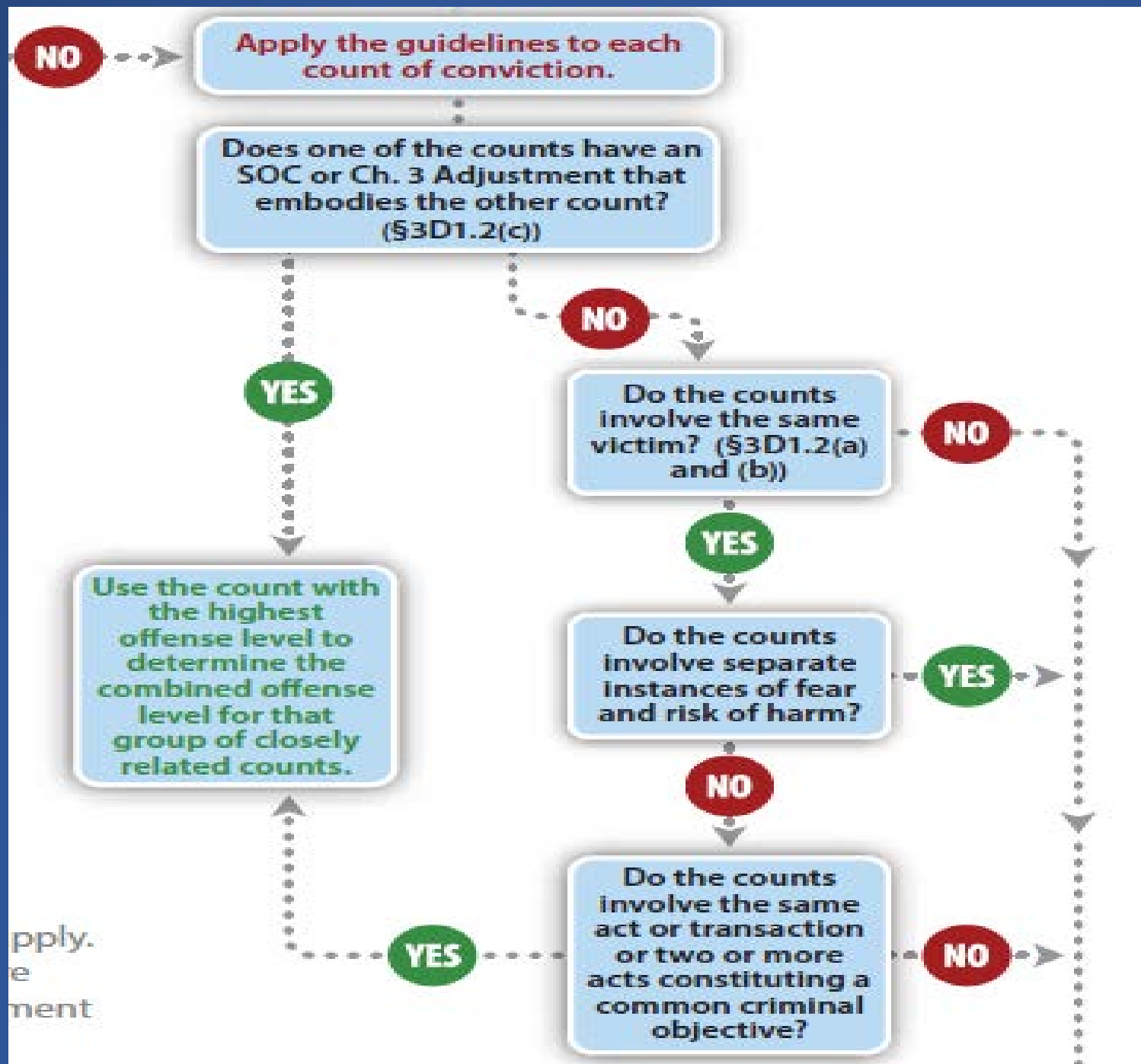
Multiple counts involve substantially the same harm under the meaning of these rules:

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



Impact of Counts Grouping under Rules (a), (b), or (c)





Apply.
e
ment

Assignment of Units (§3D1.4)

- If, after application of the grouping rules at §3D1.2, there are counts of conviction or count groups for which a single offense level must still be determined, §3D1.4 must be applied.



Assignment of Units

If more than one group:

- Compare the offense level of the highest group to the offense levels of the other groups, and assign “units”
- Increase the offense level of the highest group according to a guideline table corresponding to the number of “units”



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



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





Using the Decision Tree: Grouping Scenarios



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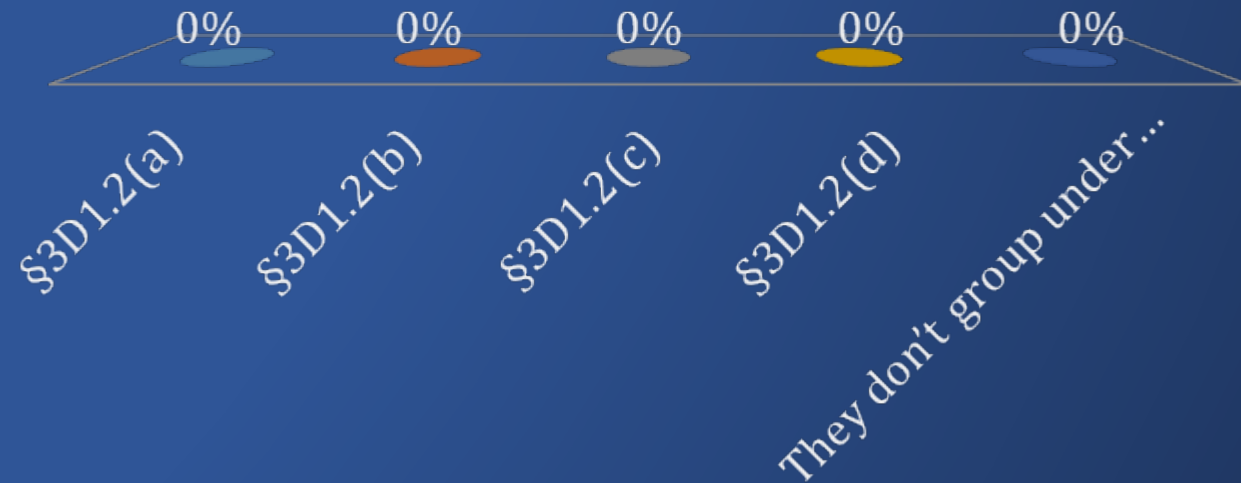
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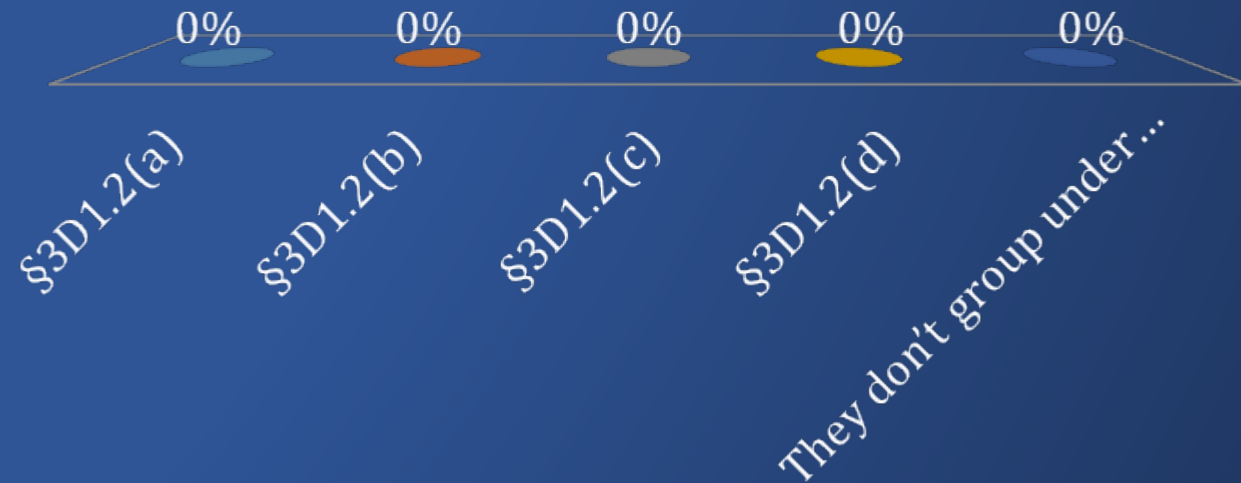
Scenario 1: Under which rule do these counts group?

- A. §3D1.2(a)
- B. §3D1.2(b)
- C. §3D1.2(c)
- D. §3D1.2(d)
- E. They don't group under §3D1.2/assign units



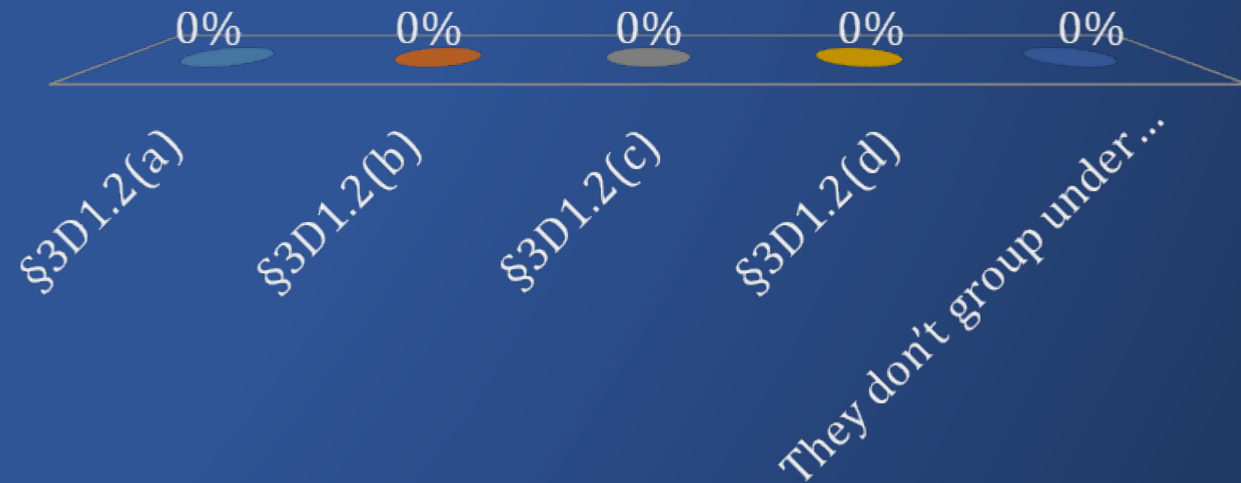
Scenario 2: Under which rule do these counts group?

- A. §3D1.2(a)
- B. §3D1.2(b)
- C. §3D1.2(c)
- D. §3D1.2(d)
- E. They don't group under §3D1.2/assign units



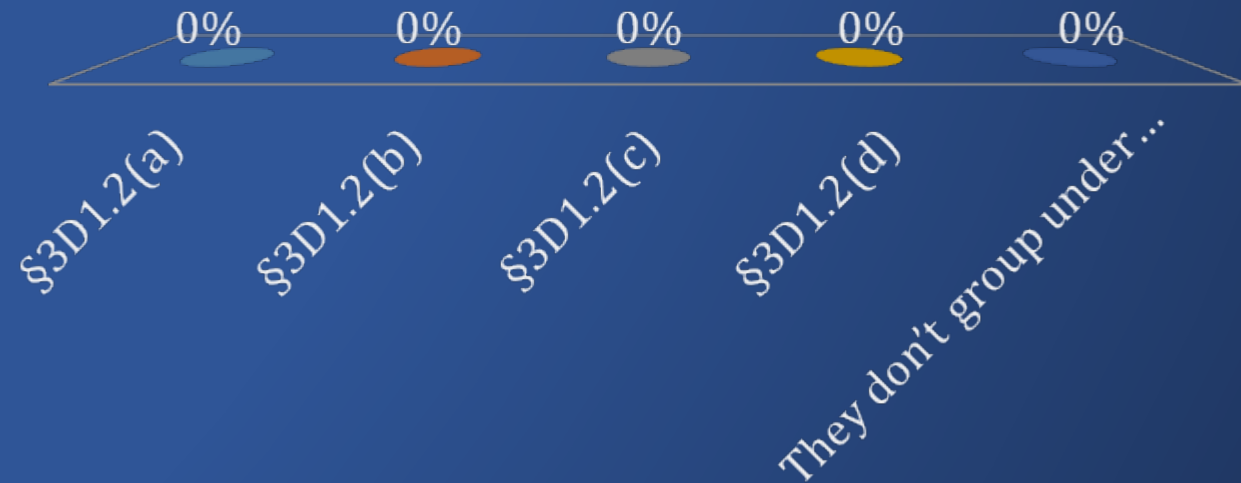
Scenario 3: Under which rule do these counts group?

- A. §3D1.2(a)
- B. §3D1.2(b)
- C. §3D1.2(c)
- D. §3D1.2(d)
- E. They don't group under §3D1.2/assign units



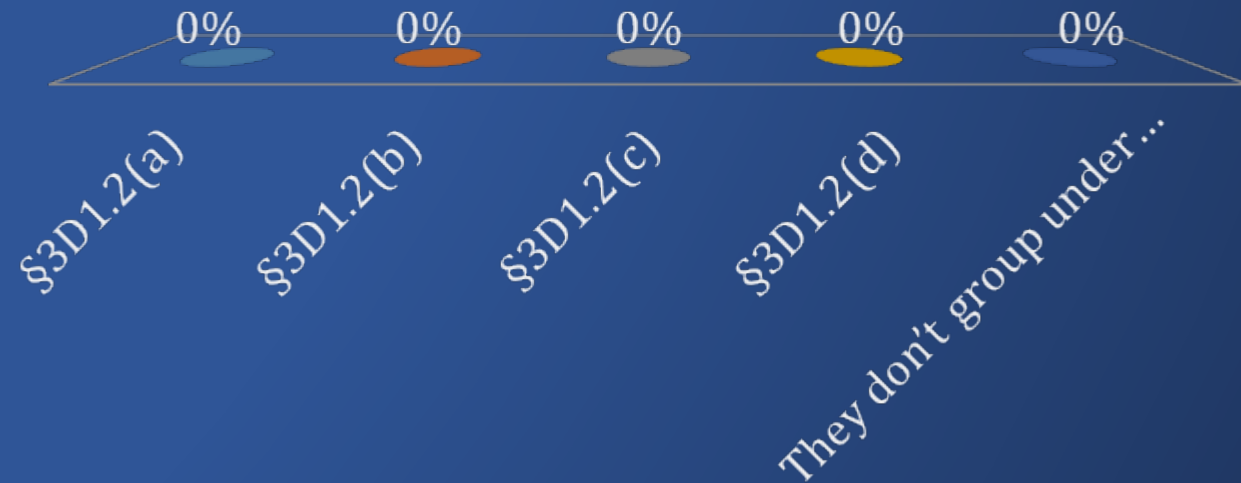
Scenario 4: Under which rule do these counts group?

- A. §3D1.2(a)
- B. §3D1.2(b)
- C. §3D1.2(c)
- D. §3D1.2(d)
- E. They don't group under §3D1.2/assign units



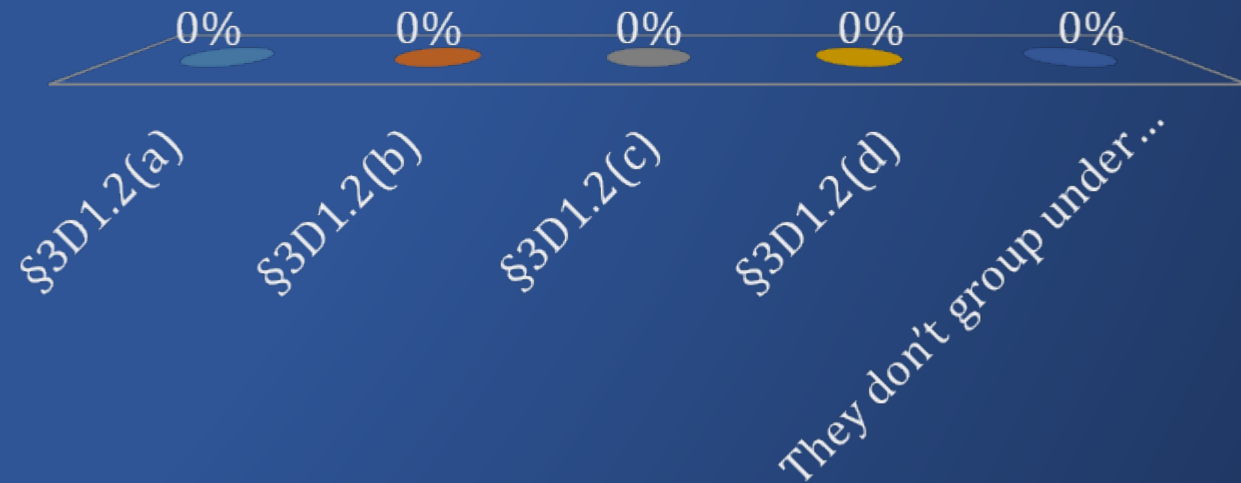
Scenario 5: Under which rule do these counts group?

- A. §3D1.2(a)
- B. §3D1.2(b)
- C. §3D1.2(c)
- D. §3D1.2(d)
- E. They don't group under §3D1.2/assign units



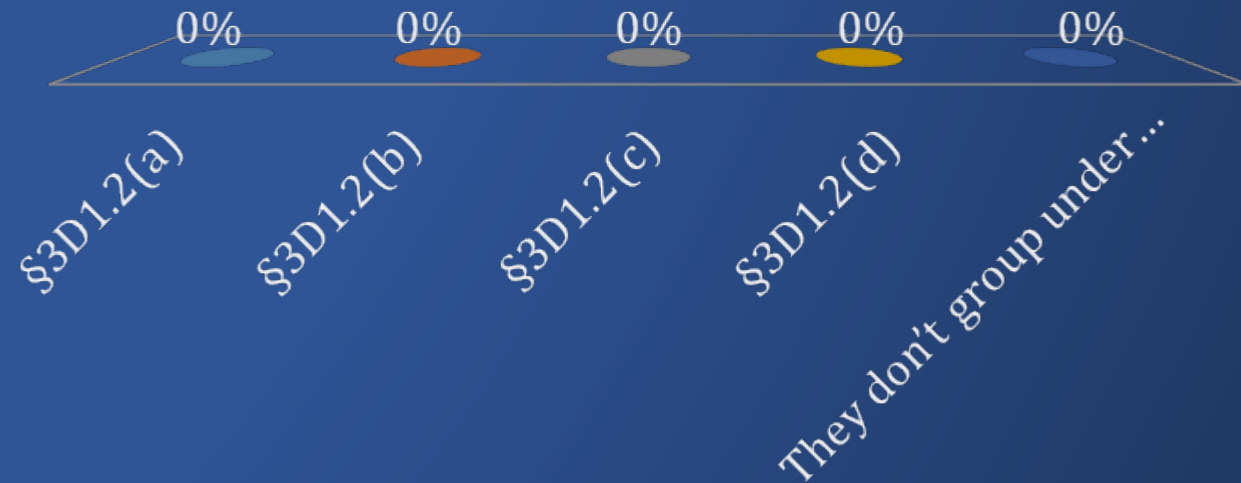
Scenario 6: Under which rule do these counts group?

- A. §3D1.2(a)
- B. §3D1.2(b)
- C. §3D1.2(c)
- D. §3D1.2(d)
- E. They don't group under §3D1.2/assign units



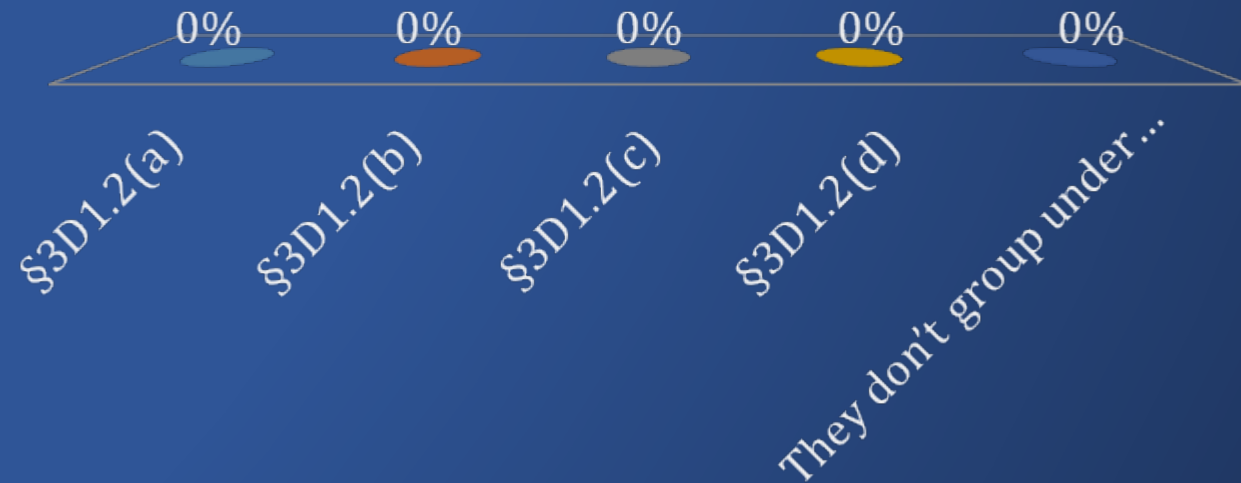
Scenario 7: Under which rule do these counts group?

- A. §3D1.2(a)
- B. §3D1.2(b)
- C. §3D1.2(c)
- D. §3D1.2(d)
- E. They don't group under §3D1.2/assign units



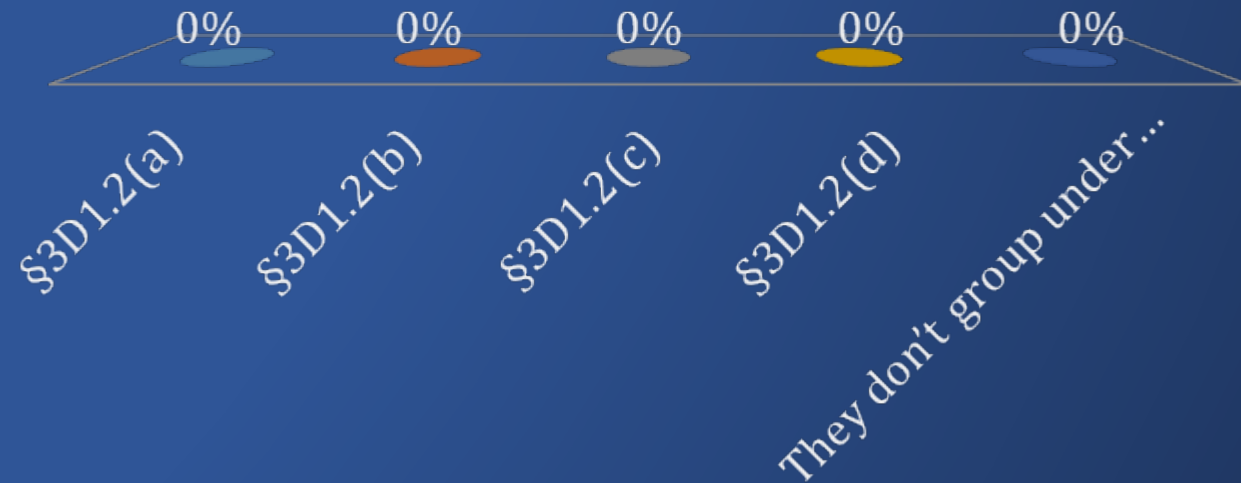
Scenario 8: Under which rule do these counts group? (Hint: more than 1)

- A. §3D1.2(a)
- B. §3D1.2(b)
- C. §3D1.2(c)
- D. §3D1.2(d)
- E. They don't group under §3D1.2/assign units



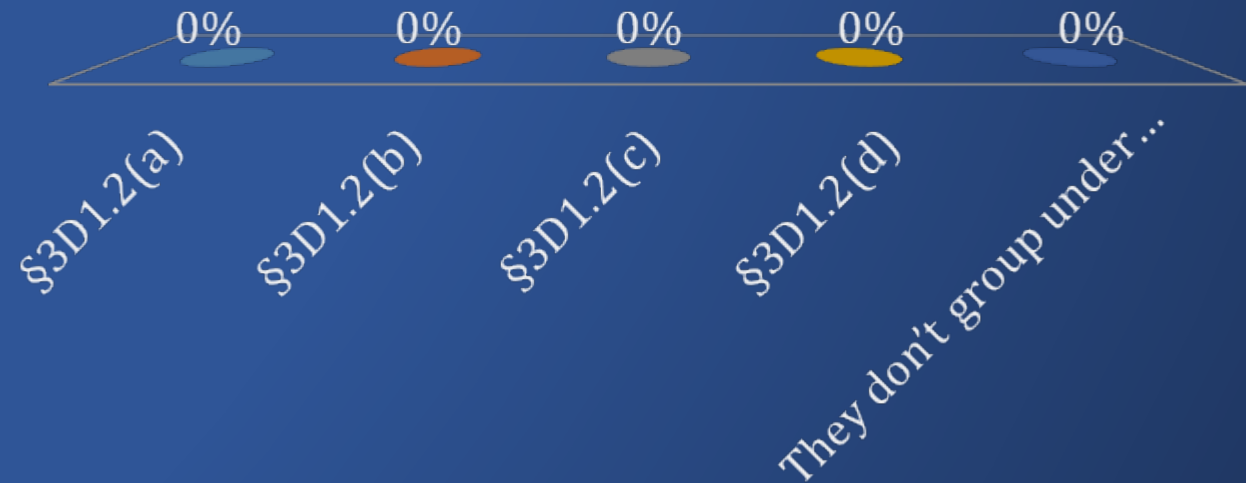
Scenario 9: Under which rule do these counts group?

- A. §3D1.2(a)
- B. §3D1.2(b)
- C. §3D1.2(c)
- D. §3D1.2(d)
- E. They don't group under §3D1.2/assign units



Scenario 10: Under which rule do these counts group?

- A. §3D1.2(a)
- B. §3D1.2(b)
- C. §3D1.2(c)
- D. §3D1.2(d)
- E. They don't group under §3D1.2/assign units





Pop Quiz!



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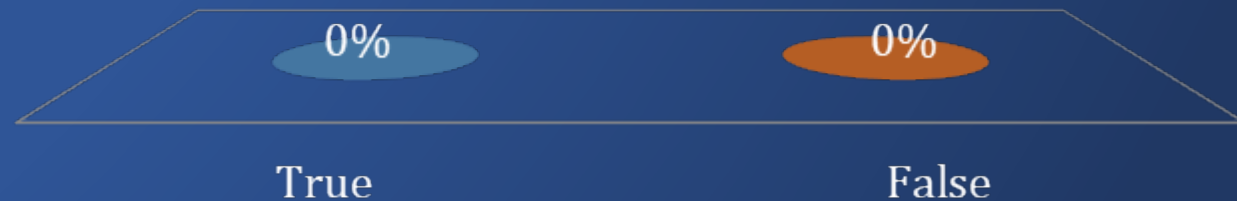
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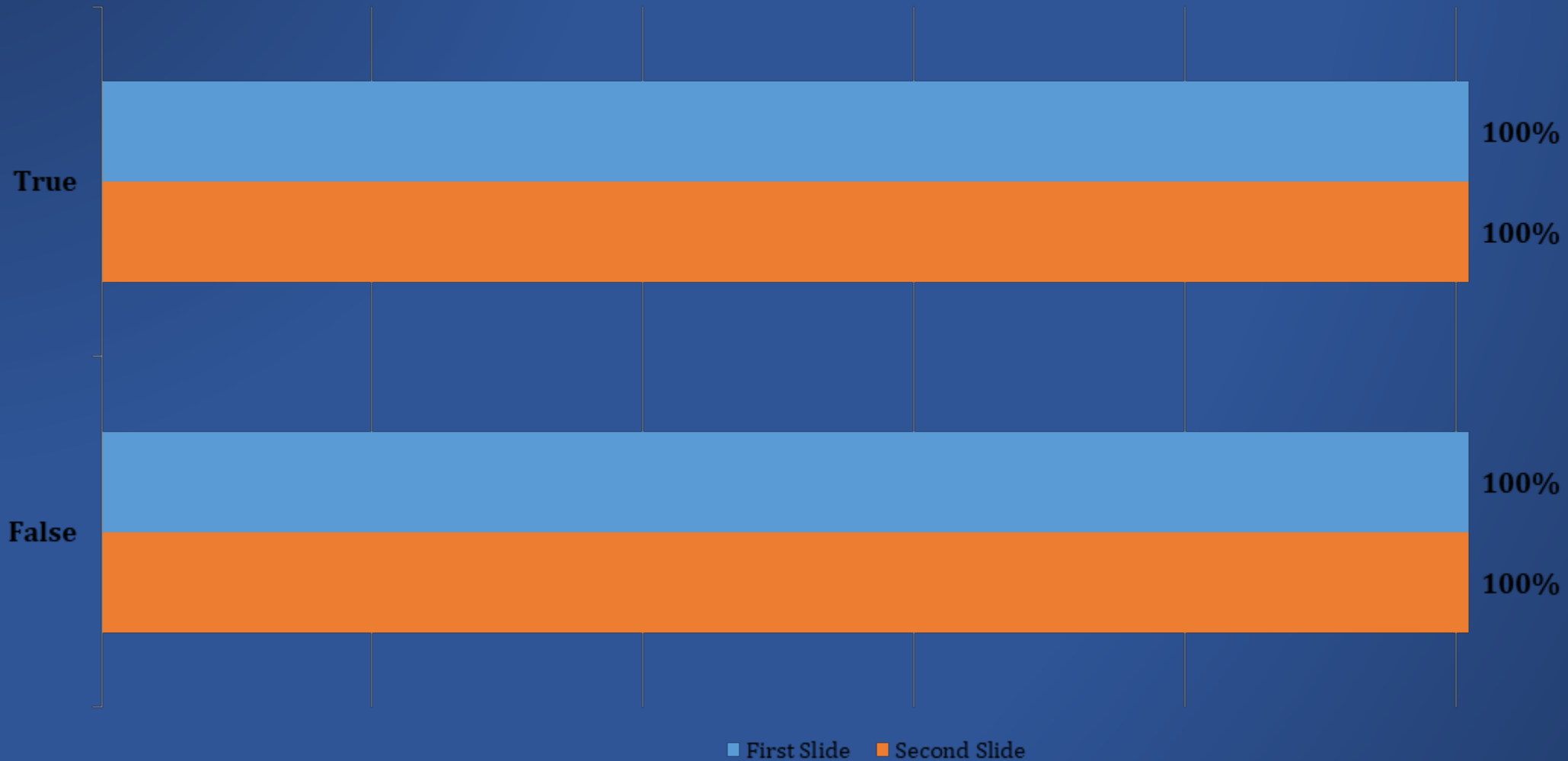
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In determining whether counts group, you must first decide whether the counts involve the same harm, regardless of what the rules state at §3D1.2.

- A. True
- B. False

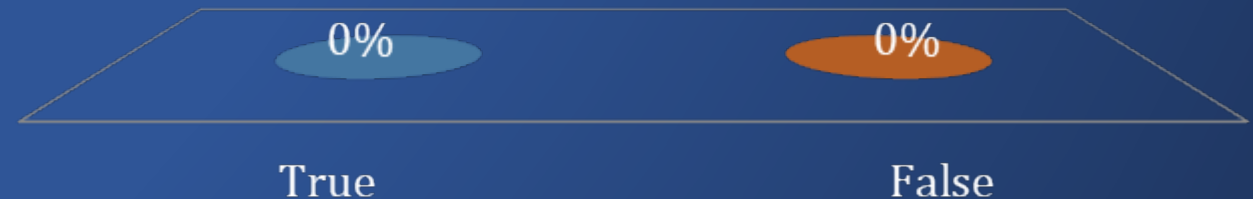


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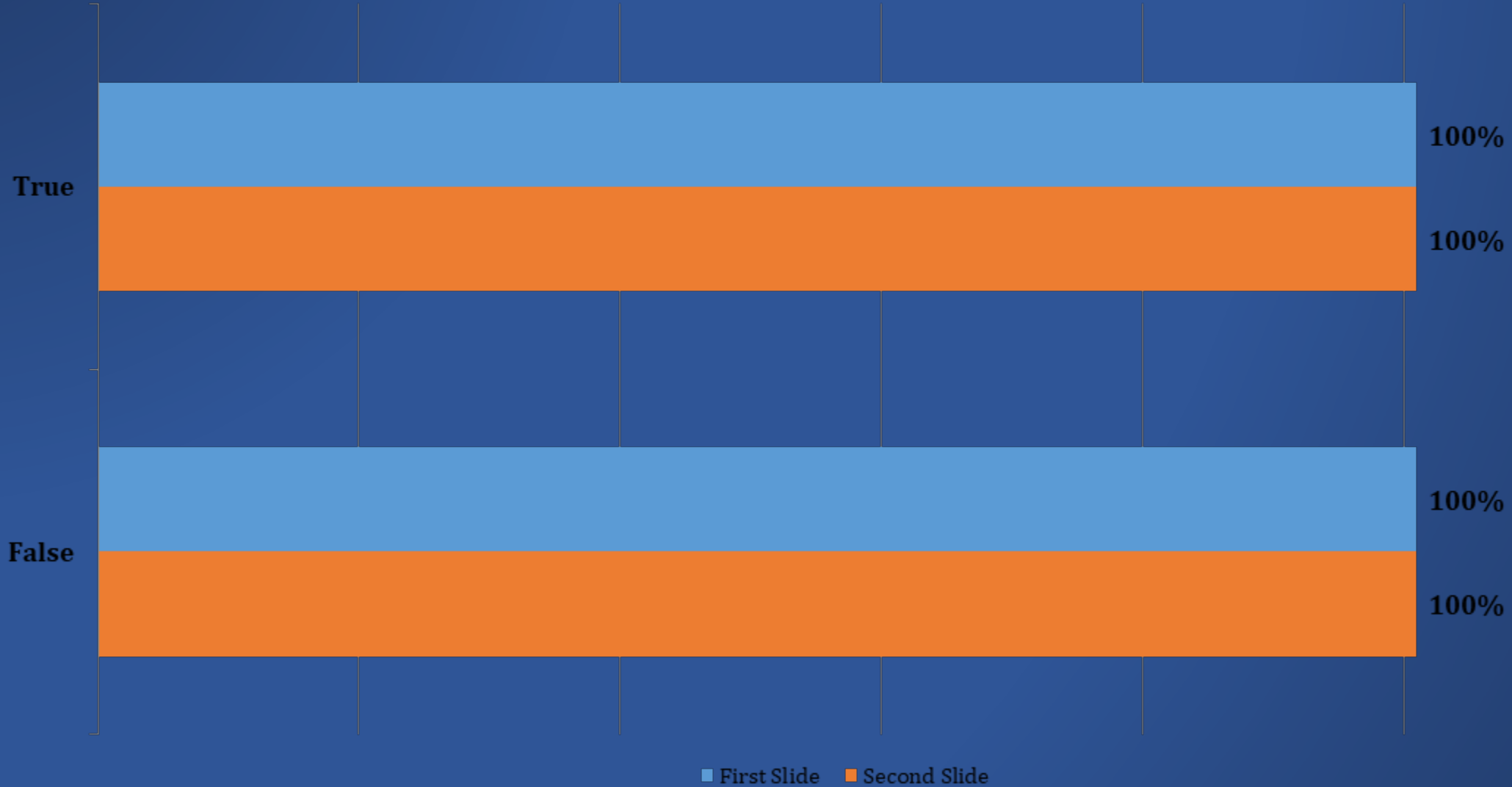


When two different guidelines are listed as “included” at §3D1.2(d), those guidelines must group under §3D1.2(d).

- A. True
- B. False

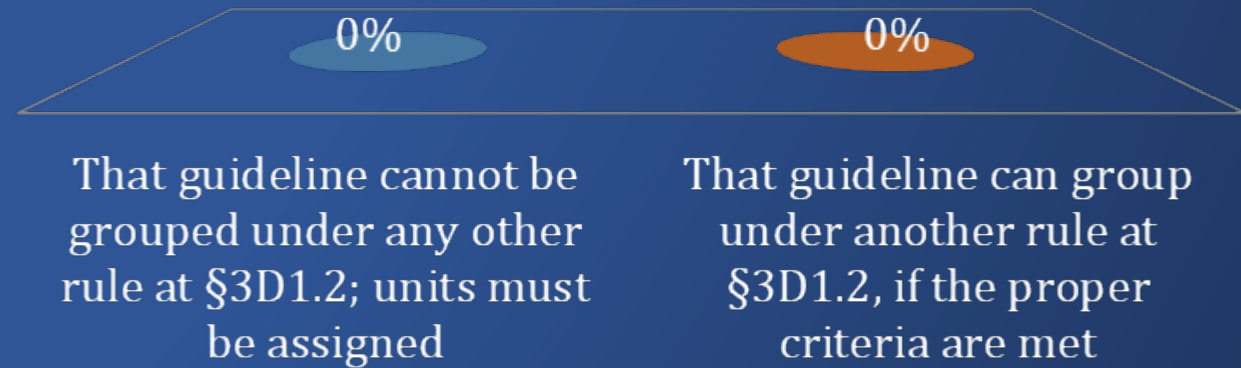


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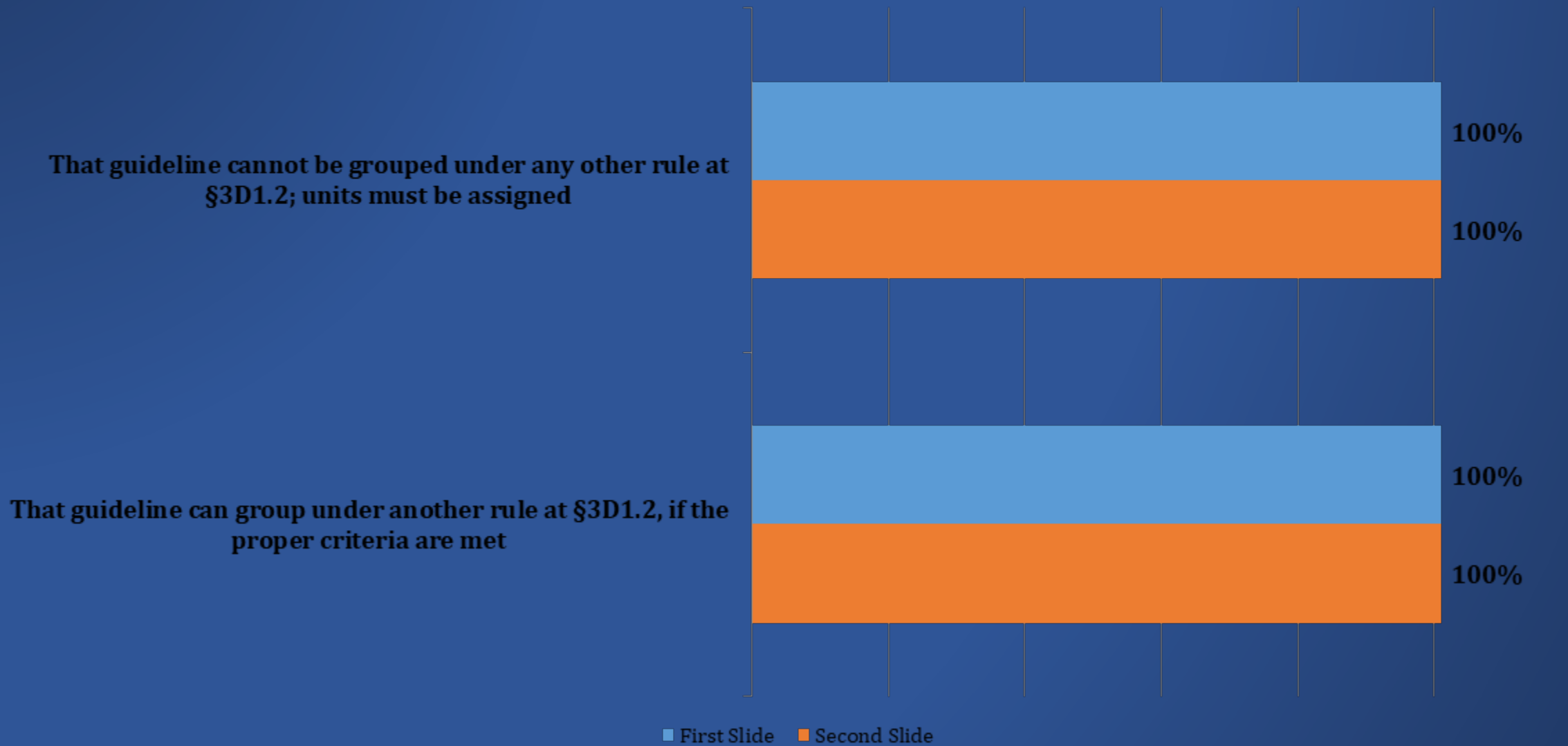


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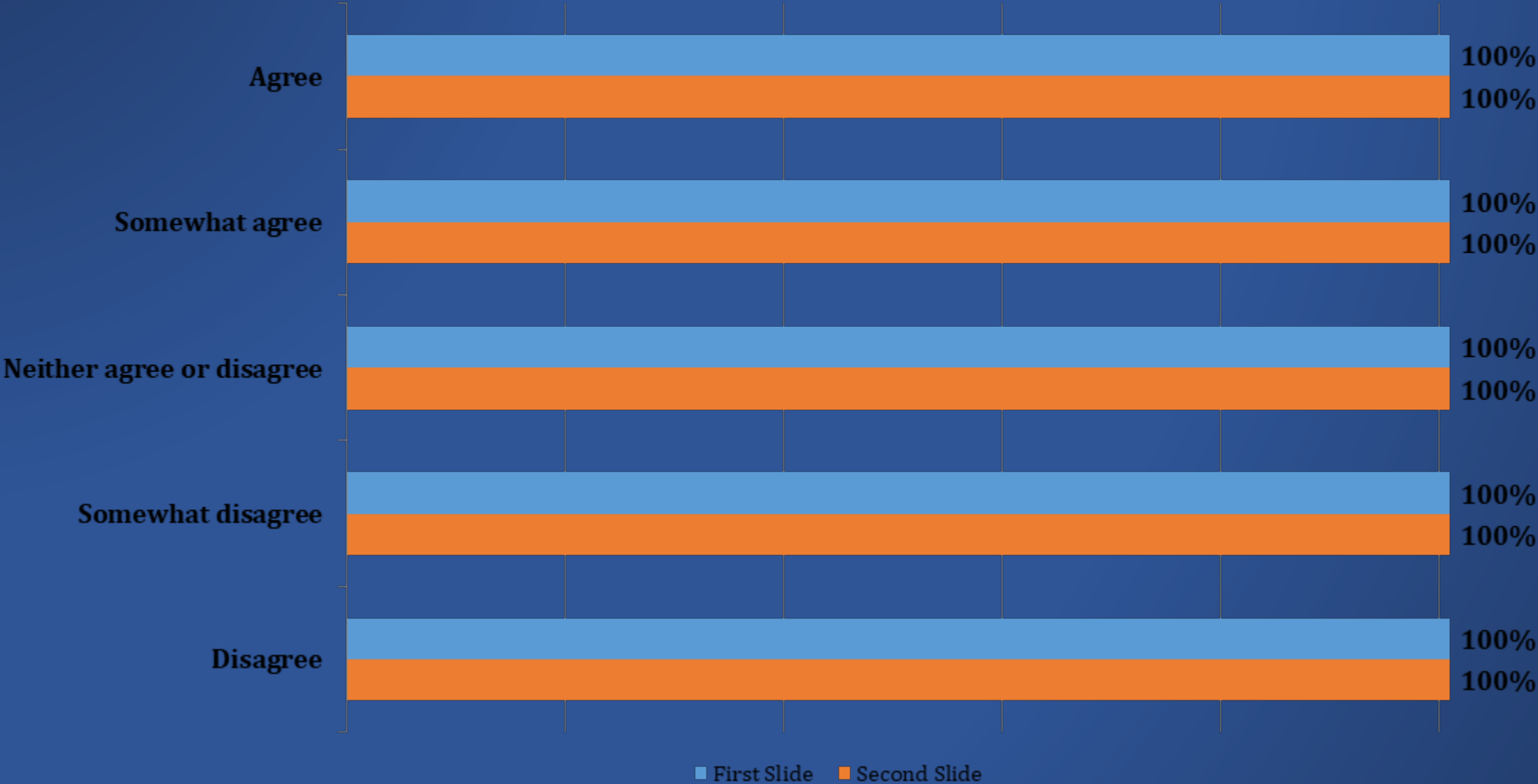


Understanding grouping is the most difficult part of guideline application.

- A. Agree
- B. Somewhat agree
- C. Neither agree or disagree
- D. Somewhat disagree
- E. Disagree



Understanding grouping is the most difficult part of guideline application.



Thank You!



Please Submit an Evaluation.



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