

subsection (b). However, a count covered by subsection (b)(1) may affect the offense level determination for other counts. For example, a defendant is convicted of one count of bank robbery (18 U.S.C. § 2113), and one count of use of a firearm in the commission of a crime of violence (18 U.S.C. § 924(c)). The two counts are not grouped together pursuant to this guideline, and, to avoid unwarranted double counting, the offense level for the bank robbery count under §2B3.1 (Robbery) is computed without application of the enhancement for weapon possession or use as otherwise required by subsection (b)(2) of that guideline. Pursuant to 18 U.S.C. § 924(c), the mandatory minimum five-year sentence on the weapon-use count runs consecutively to the guideline sentence imposed on the bank robbery count. *See* §5G1.2(a).

Unless specifically instructed, subsection (b)(1) does not apply when imposing a sentence under a statute that requires the imposition of a consecutive term of imprisonment only if a term of imprisonment is imposed (*i.e.*, the statute does not otherwise require a term of imprisonment to be imposed). *See, e.g.*, 18 U.S.C. § 3146 (Penalty for failure to appear); 18 U.S.C. § 924(a)(4) (regarding penalty for 18 U.S.C. § 922(q) (possession or discharge of a firearm in a school zone)); 18 U.S.C. § 1791(c) (penalty for providing or possessing a controlled substance in prison). Accordingly, the multiple count rules set out under this part do apply to a count of conviction under this type of statute.

Background: This section outlines the procedure to be used for determining the combined offense level. After any adjustments from Chapter Three, Parts E (Acceptance of Responsibility) and F (Early Disposition Programs), and Chapter Four, Parts B (Career Offenders and Criminal Livelihood) and C (Adjustment for Certain Zero-Point Offenders) are made, this combined offense level is used to determine the guideline sentence range. Chapter Five (Determining the Sentencing Range and Options Under the Guidelines) discusses how to determine the sentence from the (combined) offense level; §5G1.2 deals specifically with determining the sentence of imprisonment when convictions on multiple counts are involved. References in Chapter Five (Determining the Sentencing Range and Options Under the Guidelines) to the “offense level” should be treated as referring to the combined offense level after all subsequent adjustments have been made.

<i>Historical Note</i>	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 348); November 1, 1998 (amendment 579); November 1, 2000 (amendment 598); November 1, 2005 (amendments 677 and 680); November 1, 2007 (amendment 707); November 1, 2023 (amendment 824); November 1, 2024 (amendment 831); November 1, 2025 (amendment 836).
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§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:

- (a) When counts involve the same victim and the same act or transaction.
- (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.