

- (2) If (A) the offense involved more than two threats; or (B) the defendant is convicted under 18 U.S.C. § 1521 and the offense involved more than two false liens or encumbrances, increase by **2** levels.
 - (3) If the offense involved the violation of a court protection order, increase by **2** levels.
 - (4) If the offense resulted in (A) substantial disruption of public, governmental, or business functions or services; or (B) a substantial expenditure of funds to clean up, decontaminate, or otherwise respond to the offense, increase by **4** levels.
 - (5) If the defendant (A) is convicted under 18 U.S.C. § 115, (B) made a public threatening communication, and (C) knew or should have known that the public threatening communication created a substantial risk of inciting others to violate 18 U.S.C. § 115, increase by **2** levels.
 - (6) If (A) subsection (a)(2) and subdivisions (1), (2), (3), (4), and (5) do not apply, and (B) the offense involved a single instance evidencing little or no deliberation, decrease by **4** levels.
- (c) Cross Reference
- (1) If the offense involved any conduct evidencing an intent to carry out a threat to use a weapon of mass destruction, as defined in 18 U.S.C. § 2332a(c)(2)(B), (C), and (D), apply §2M6.1 (Weapons of Mass Destruction), if the resulting offense level is greater than that determined under this guideline.

Commentary

Statutory Provisions: 18 U.S.C. §§ 32(c), 35(b), 871, 876(c), 877, 878(a), 879, 1038, 1521, 1992(a)(9), (a)(10), 2291(a)(8), 2291(e), 2292, 2332b(a)(2); 47 U.S.C. § 223(a)(1)(C)–(E); 49 U.S.C. § 46507. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. **Scope of Conduct to Be Considered.**—In determining whether subsections (b)(1), (b)(2), and (b)(3) apply, the court shall consider both conduct that occurred prior to the offense and conduct that occurred during the offense; however, conduct that occurred prior to the offense must be substantially and directly connected to the offense, under the facts of the case taken as a whole. For example, if the defendant engaged in several acts of mailing threatening letters to the same victim over a period of years (including acts that occurred prior to the offense), then for purposes of determining whether subsections (b)(1), (b)(2), and (b)(3) apply, the court shall consider only those prior acts of threatening the victim that have a substantial and direct connection to the offense.