

§2M6.1;
§2T1.9.

Offense guidelines that expressly cover solicitations include:

§2A1.5;
§§2C1.1, 2C1.2;
§2E5.1.

2. “**Substantive offense**,” as used in this guideline, means the offense that the defendant was convicted of soliciting, attempting, or conspiring to commit. Under §2X1.1(a), the base offense level will be the same as that for the substantive offense. But the only specific offense characteristics from the guideline for the substantive offense that apply are those that are determined to have been specifically intended or actually occurred. Speculative specific offense characteristics will not be applied. For example, if two defendants are arrested during the conspiratorial stage of planning an armed bank robbery, the offense level ordinarily would not include aggravating factors regarding possible injury to others, hostage taking, discharge of a weapon, or obtaining a large sum of money, because such factors would be speculative. The offense level would simply reflect the level applicable to robbery of a financial institution, with the enhancement for possession of a weapon. If it was established that the defendants actually intended to restrict the teller’s freedom of movement through physical contact or confinement, the specific offense characteristic for such restriction would be added. In an attempted theft, the value of the items that the defendant attempted to steal would be considered.
3. If the substantive offense is not covered by a specific guideline, *see* §2X5.1 (Other Offenses).
4. In certain cases, the participants may have completed (or have been about to complete but for apprehension or interruption) all of the acts necessary for the successful completion of part, but not all, of the intended offense. In such cases, the offense level for the count (or group of closely related multiple counts) is whichever of the following is greater: the offense level for the intended offense minus 3 levels (under §2X1.1(b)(1), (b)(2), or (b)(3)(A)), or the offense level for the part of the offense for which the necessary acts were completed (or about to be completed but for apprehension or interruption). For example, where the intended offense was the theft of \$800,000 but the participants completed (or were about to complete) only the acts necessary to steal \$30,000, the offense level is the offense level for the theft of \$800,000 minus 3 levels, or the offense level for the theft of \$30,000, whichever is greater.

In the case of multiple counts that are not closely related counts, whether the 3-level reduction under §2X1.1(b)(1), (b)(2), or (b)(3)(A) applies is determined separately for each count.

Background: In most prosecutions for conspiracies or attempts, the substantive offense was substantially completed or was interrupted or prevented on the verge of completion by the intercession of law enforcement authorities or the victim. In such cases, no reduction of the offense level is warranted. Sometimes, however, the arrest occurs well before the defendant or any co-conspirator has completed the acts necessary for the substantive offense. Under such circumstances, a reduction of 3 levels is provided under §2X1.1(b)(1) or (2).

<i>Historical Note</i>	Effective November 1, 1987. Amended effective January 15, 1988 (amendment 42); November 1, 1989 (amendments 238, 239, 240, 241, and 242); November 1, 1990 (amendments 311 and 327); November 1, 1991 (amendment 411); November 1, 1992 (amendments 444 and 447); November 1, 1993 (amendment 496); November 1, 2001 (amendment 633); November 1, 2002 (amendment 637); November 1, 2004 (amendment 669); November 1, 2007 (amendments 699 and 700); November 1, 2025 (amendment 832).
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