

2007 Federal Sentencing Guidelines

CHAPTER 2 - PART A - OFFENSES AGAINST THE PERSON

§2A6.1. Threatening or Harassing Communications; Hoaxes

(a) Base Offense Level:

(1) **12**; or

(2) **6**, if the defendant is convicted of an offense under 47 U.S.C. § 223(a)(1)(C), (D), or (E) that did not involve a threat to injure a person or property.

(b) Specific Offense Characteristics

(1) If the offense involved any conduct evidencing an intent to carry out such threat, increase by **6** levels.

(2) If the offense involved more than two threats, 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 (A) subsection (a)(2) and subdivisions (1), (2), (3), and (4) 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, 877, 878(a), 879, 1038, 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.

2. *Grouping.*—For purposes of Chapter Three, Part D (Multiple Counts), multiple counts

involving making a threatening or harassing communication to the same victim are grouped together under §3D1.2 (Groups of Closely Related Counts). Multiple counts involving different victims are not to be grouped under §3D1.2.

3. *Departure Provisions.*—

(A) In General.—*The Commission recognizes that offenses covered by this guideline may include a particularly wide range of conduct and that it is not possible to include all of the potentially relevant circumstances in the offense level. Factors not incorporated in the guideline may be considered by the court in determining whether a departure from the guidelines is warranted. See Chapter Five, Part K (Departures).*

(B) Multiple Threats or Victims.—*If the offense involved substantially more than two threatening communications to the same victim or a prolonged period of making harassing communications to the same victim, or if the offense involved multiple victims, an upward departure may be warranted.*

Background: *These statutes cover a wide range of conduct, the seriousness of which depends upon the defendant's intent and the likelihood that the defendant would carry out the threat. The specific offense characteristics are intended to distinguish such cases.*

Historical Note: Effective November 1, 1987. Amended effective November 1, 1993 (*see* Appendix C, amendment 480); November 1, 1997 (*see* Appendix C, amendment 549); November 1, 2002 (*see* Appendix C, amendment 637); November 1, 2006 (*see* Appendix C, amendment 686); November 1, 2007 (*see* Appendix C, amendment 699).