§2B3.2 Extortion by Force or Threat of Injury or Serious Damage

(a) Base Offense Level: 18

(b) Specific Offense Characteristics

(1) If the offense involved an express or implied threat of death, bodily injury, or kidnapping, increase by 2 levels.

(2) If the greater of the amount demanded or the loss to the victim exceeded $20,000, increase by the corresponding number of levels from the table in §2B3.1(b)(7).

(3) (A)(i) If a firearm was discharged, increase by 7 levels; (ii) if a firearm was otherwise used, increase by 6 levels; (iii) if a firearm was brandished or possessed, increase by 5 levels; (iv) if a dangerous weapon was otherwise used, increase by 4 levels; or (v) if a dangerous weapon was brandished or possessed, increase by 3 levels; or

(B) If (i) the offense involved preparation to carry out a threat of (I) death; (II) serious bodily injury; (III) kidnapping; (IV) product tampering; or (V) damage to a computer system used to maintain or operate a critical infrastructure, or by or for a government entity in furtherance of the administration of justice, national defense, or national security; or (ii) the participant(s) otherwise demonstrated the ability to carry out a threat described in any of subdivisions (i)(I) through (i)(V), increase by 3 levels.

(4) If any victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

<table>
<thead>
<tr>
<th>DEGREE OF BODILY INJURY</th>
<th>INCREASE IN LEVEL</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) Bodily Injury</td>
<td>add 2</td>
</tr>
<tr>
<td>(B) Serious Bodily Injury</td>
<td>add 4</td>
</tr>
<tr>
<td>(C) Permanent or Life-Threatening Bodily Injury</td>
<td>add 6</td>
</tr>
<tr>
<td>(D) If the degree of injury is between that specified in subdivisions (A) and (B),</td>
<td>add 3 levels; or</td>
</tr>
<tr>
<td>(E) If the degree of injury is between that specified in subdivisions (B) and (C),</td>
<td>add 5 levels.</td>
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</tbody>
</table>

Provided, however, that the cumulative adjustments from (3) and (4) shall not exceed 11 levels.
(5) (A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by 4 levels; or (B) if any person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by 2 levels.

(c) Cross References

(1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder).

(2) If the offense was tantamount to attempted murder, apply §2A2.1 (Assault with Intent to Commit Murder; Attempted Murder) if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 875(b), 876, 877, 1030(a)(7), 1951. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. Definitions.—For purposes of this guideline:

“Abducted,” “bodily injury,” “brandished,” “dangerous weapon,” “firearm,” “otherwise used,” “permanent or life-threatening bodily injury,” “physically restrained,” and “serious bodily injury” have the meaning given those terms in Application Note 1 of the Commentary to §1B1.1 (Application Instructions).

“Critical infrastructure” means systems and assets vital to national defense, national security, economic security, public health or safety, or any combination of those matters. A critical infrastructure may be publicly or privately owned. Examples of critical infrastructures include gas and oil production, storage, and delivery systems, water supply systems, telecommunications networks, electrical power delivery systems, financing and banking systems, emergency services (including medical, police, fire, and rescue services), transportation systems and services (including highways, mass transit, airlines, and airports), and government operations that provide essential services to the public.

“Government entity” has the meaning given that term in 18 U.S.C. § 1030(o)(9).

2. This guideline applies if there was any threat, express or implied, that reasonably could be interpreted as one to injure a person or physically damage property, or any comparably serious threat, such as to drive an enterprise out of business. Even if the threat does not in itself imply violence, the possibility of violence or serious adverse consequences may be inferred from the circumstances of the threat or the reputation of the person making it. An ambiguous threat, such as “pay up or else,” or a threat to cause labor problems, ordinarily should be treated under this section.
3. Guidelines for bribery involving public officials are found in Part C, Offenses Involving Public Officials. “Extortion under color of official right,” which usually is solicitation of a bribe by a public official, is covered under §2C1.1 unless there is use of force or a threat that qualifies for treatment under this section. Certain other extortion offenses are covered under the provisions of Part E, Offenses Involving Criminal Enterprises and Racketeering.

4. The combined adjustments for weapon involvement and injury are limited to a maximum enhancement of 11 levels.

5. “Loss to the victim,” as used in subsection (b)(2), means any demand paid plus any additional consequential loss from the offense (e.g., the cost of defensive measures taken in direct response to the offense).

6. In certain cases, an extortionate demand may be accompanied by conduct that does not qualify as a display of a dangerous weapon under subsection (b)(3)(A)(v) but is nonetheless similar in seriousness, demonstrating the defendant’s preparation or ability to carry out the threatened harm (e.g., an extortionate demand containing a threat to tamper with a consumer product accompanied by a workable plan showing how the product’s tamper-resistant seals could be defeated, or a threat to kidnap a person accompanied by information showing study of that person’s daily routine). Subsection (b)(3)(B) addresses such cases.

7. If the offense involved the threat of death or serious bodily injury to numerous victims (e.g., in the case of a plan to derail a passenger train or poison consumer products), an upward departure may be warranted.

8. If the offense involved organized criminal activity, or a threat to a family member of the victim, an upward departure may be warranted.

Background: The Hobbs Act, 18 U.S.C. § 1951, prohibits extortion, attempted extortion, and conspiracy to extort. It provides for a maximum term of imprisonment of twenty years. 18 U.S.C. §§ 875–877 prohibit communication of extortionate demands through various means. The maximum penalty under these statutes varies from two to twenty years. Violations of 18 U.S.C. § 875 involve threats or demands transmitted by interstate commerce. Violations of 18 U.S.C. § 876 involve the use of the United States mails to communicate threats, while violations of 18 U.S.C. § 877 involve mailing threatening communications from foreign countries. This guideline also applies to offenses under 18 U.S.C. § 1030(a)(7) involving a threat to impair the operation of a "protected computer."

| Historical Note | Effective November 1, 1987. Amended effective November 1, 1989 (amendments 112, 113, and 303); November 1, 1990 (amendment 316); November 1, 1991 (amendment 366); November 1, 1993 (amendment 479); November 1, 1997 (amendment 551); November 1, 1998 (amendment 586); November 1, 2000 (amendment 601); November 1, 2003 (amendment 654); November 1, 2015 (amendment 791). |

§2B3.3. Blackmail and Similar Forms of Extortion

(a) Base Offense Level: 9