PART X — OTHER OFFENSES

1. CONSPIRACIES, ATTEMPTS, SOLICITATIONS

§2X1.1. Attempt, Solicitation, or Conspiracy (Not Covered by a Specific Offense Guideline)

(a) Base Offense Level: The base offense level from the guideline for the substantive offense, plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty.

(b) Specific Offense Characteristics

(1) If an attempt, decrease by 3 levels, unless the defendant completed all the acts the defendant believed necessary for successful completion of the substantive offense or the circumstances demonstrate that the defendant was about to complete all such acts but for apprehension or interruption by some similar event beyond the defendant’s control.

(2) If a conspiracy, decrease by 3 levels, unless the defendant or a co-conspirator completed all the acts the conspirators believed necessary on their part for the successful completion of the substantive offense or the circumstances demonstrate that the conspirators were about to complete all such acts but for apprehension or interruption by some similar event beyond their control.

(3) (A) If a solicitation, decrease by 3 levels unless the person solicited to commit or aid the substantive offense completed all the acts he believed necessary for successful completion of the substantive offense or the circumstances demonstrate that the person was about to complete all such acts but for apprehension or interruption by some similar event beyond such person’s control.

(B) If the statute treats solicitation of the substantive offense identically with the substantive offense, do not apply subdivision (A) above; i.e., the offense level for solicitation is the same as that for the substantive offense.
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(c) Cross Reference

(1) When an attempt, solicitation, or conspiracy is expressly covered by another offense guideline section, apply that guideline section.

(d) Special Instruction

(1) Subsection (b) shall not apply to:

(A) Any of the following offenses, if such offense involved, or was intended to promote, a federal crime of terrorism as defined in 18 U.S.C. § 2332b(g)(5):

18 U.S.C. § 81;  
18 U.S.C. § 930(c);  
18 U.S.C. § 1362;  
18 U.S.C. § 1363;  
18 U.S.C. § 1992(a)(1)–(a)(7), (a)(9), (a)(10);  
18 U.S.C. § 2339A;  
18 U.S.C. § 2340A;  
49 U.S.C. § 46504;  
49 U.S.C. § 46505; and  

(B) Any of the following offenses:

18 U.S.C. § 32; and  

Commentary


Application Notes:

1. Certain attempts, conspiracies, and solicitations are expressly covered by other offense guidelines.

Offense guidelines that expressly cover attempts include:

§§2A2.1, 2A3.1, 2A3.2, 2A3.3, 2A3.4, 2A4.2, 2A5.1;  
§§2C1.1, 2C1.2;  
§§2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2, 2D3.1, 2D3.2;  
§2E5.1;  
§2M6.1;  
§2N1.1;  
§2Q1.4.
Offense guidelines that expressly cover conspiracies include:

- §2A1.5;
- §§2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2, 2D3.1, 2D3.2;
- §2H1.1;
- §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 physically restrain the teller, the specific offense characteristic for physical restraint 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).


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2. **AIDING AND ABETTING**


**§2X2.1. Aiding and Abetting**

The offense level is the same level as that for the underlying offense.

**Commentary**


**Application Note:**

1. **Definition.**—For purposes of this guideline, “**underlying offense**” means the offense the defendant is convicted of aiding or abetting, or in the case of a violation of 18 U.S.C. § 2339A or § 2339C(a)(1)(A), “underlying offense” means the offense the defendant is convicted of having materially supported or provided or collected funds for, prior to or during its commission.

**Background:** A defendant convicted of aiding and abetting is punishable as a principal. 18 U.S.C. § 2. This section provides that aiding and abetting the commission of an offense has the same offense level as the underlying offense. An adjustment for a mitigating role (§3B1.2) may be applicable.


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3. **ACCESSORY AFTER THE FACT**


**§2X3.1. Accessory After the Fact**

(a) **Base Offense Level:**

(1) 6 levels lower than the offense level for the underlying offense, except as provided in subdivisions (2) and (3).