

Uniform Laws Annotated  
Model Penal Code (Refs & Annos)  
Part I. General Provisions  
Article 5. Inchoate Crimes

Model Penal Code § 5.01

§ 5.01. Criminal Attempt.

Currentness

(1) **Definition of Attempt.** A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

(a) purposely engages in conduct that would constitute the crime if the attendant circumstances were as he believes them to be; or

(b) when causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part; or

(c) purposely does or omits to do anything that, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

(2) **Conduct That May Be Held Substantial Step Under Subsection (1)(c).** Conduct shall not be held to constitute a substantial step under Subsection (1)(c) of this Section unless it is strongly corroborative of the actor's criminal purpose. Without negating the sufficiency of other conduct, the following, if strongly corroborative of the actor's criminal purpose, shall not be held insufficient as a matter of law:

(a) lying in wait, searching for or following the contemplated victim of the crime;

(b) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;

(c) reconnoitering the place contemplated for the commission of the crime;

(d) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;

(e) possession of materials to be employed in the commission of the crime, that are specially designed for such unlawful use or that can serve no lawful purpose of the actor under the circumstances;

(f) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, if such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances;

(g) soliciting an innocent agent to engage in conduct constituting an element of the crime.

**(3) Conduct Designed to Aid Another in Commission of a Crime.** A person who engages in conduct designed to aid another to commit a crime that would establish his complicity under Section 2.06 if the crime were committed by such other person, is guilty of an attempt to commit the crime, although the crime is not committed or attempted by such other person.

**(4) Renunciation of Criminal Purpose.** When the actor's conduct would otherwise constitute an attempt under Subsection (1)(b) or (1)(c) of this Section, it is an affirmative defense that he abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The establishment of such defense does not, however, affect the liability of an accomplice who did not join in such abandonment or prevention.

Within the meaning of this Article, renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, that increase the probability of detection or apprehension or that make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.

#### Editors' Notes

#### EXPLANATORY NOTE

Subsection (1) sets forth the general requirements for an attempt. For analytical clarity, it divides the cases into three types: those where the actor's conduct would constitute the crime if the circumstances were as he believed them to be; those where the actor has completed conduct that he expects to cause a proscribed result; and those where the actor has not yet completed his own conduct, and the problem is to distinguish between acts of preparation and a criminal attempt. In this instance, liability depends upon the actor having taken a "substantial step" in a course of conduct planned to culminate in commission of a crime. In all three situations the mens rea is purpose, with two exceptions: with respect to the circumstances under which a crime must be committed, the culpability otherwise required for commission of the crime is also applicable to the attempt; and with respect to offenses where causing a result is an element, a belief that the result will occur without further conduct on the actor's part will suffice. The impossibility defense is rejected, liability being focused upon the circumstances as the actor believes them to be rather than as they actually exist.

Subsection (2) elaborates on the preparation-attempt problem by indicating what is meant by the concept of "substantial step" contained in Subsection (1)(c). Conduct cannot be held to be a substantial step unless it is strongly corroborative of the actor's criminal purpose. A list of kinds of conduct that corresponds with patterns found in common law cases is also provided, with the requirement that the issue of guilt be submitted to the jury if one or more of them occurs and strongly corroborates the actor's criminal purpose.

Subsection (3) fills what would otherwise be a gap in complicity liability. Section 2.06 covers accomplice liability in situations where the principal actor actually commits the offense. In cases where the principal actor does not commit

an offense, however, it is provided here that the accomplice will be liable if he engaged in conduct that would have established his complicity had the crime been committed.

Subsection (4) develops the defense of renunciation, which can be claimed if the actor abandoned or otherwise prevented the commission of the offense, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The meaning of “complete and voluntary” is elucidated in the second paragraph of the provision. The defense is an affirmative defense, which under Section 1.12 means that the defendant has the burden of raising the issue and the prosecution has the burden of persuasion.

For detailed Comment, *see* MPC Part I Commentaries, vol. 2, at 298.

#### LAW REVIEW AND JOURNAL COMMENTARIES

“Analyzing 18 U.S.C. § 2113(A) of the Federal Bank Robbery Act: Achieving Safety and Upholding Precedent Through Statutory Amendment”. Jennifer M. Lota Seton Hall Circuit Review, 7 (2011).

"Attempt, preparation, and harm: The case of the jealous ex-husband". John Hasnas. 9 Ohio State Journal of Criminal Law 545 (2012).

Attempted stalking: An attempt-to-almost-attempt-to-act. Nick Zimmerman. 20 N.Ill.U.L.Rev. 219 (2000).

"Danger: The ethics of preemptive action". Larry Alexander and Kimberly Kessler Ferzan. 9 Ohio State Journal of Criminal Law 545 (2012).

"Defining inchoate crime: An incomplete attempt". Michael T. Cahill. 9 Ohio State Journal of Criminal Law 545 (2012).

Element analysis in defining criminal liability: Model penal code and beyond. Paul H. Robinson and Jane A. Grall. 35 Stan.L.Rev. 681 (1983).

From *Rethinking* to *Internationalizing Criminal Law*. George P. Fletcher. 39 Tulsa L.J. 979 (Summer 2004).

"Ignorance and mistake". Kenneth W. Simons. 9 Ohio State Journal of Criminal Law 545 (2012).

Is intent an essential element of criminal attempt in Maine? 34 Me.L.Rev. 479 (1982).

New attempt laws: Unsuspected threat to Fourth Amendment. Robert L. Misner. 33 Stan.L.Rev. 201 (1981).

"Rethinking attempt under the Model Penal Code". William T. Pizzil. 9 Ohio State Journal of Criminal Law 545 (2012).

Should voluntary abandonment be a defense to attempt crimes? Note, 26 Am.Crim.L.Rev. 441 (1988).

#### Notes of Decisions (149)

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