

DRAFT – State’s Attorneys’ Proposal of Amendment

Sec. 1. 13 V.S.A. § 9 is amended to read:

§ 9. ATTEMPTS

(a) ~~A-Attempts; generally. Except as provided in subsection (d) of this section, a person who attempts to commit an offense and does an act toward the commission thereof, but by reason of being interrupted or prevented fails in the execution of the same, shall be punished as herein provided unless other express provision is made by law for the punishment of the attempt. If the offense attempted to be committed is murder, aggravated murder, kidnapping, arson causing death, human trafficking, aggravated human trafficking, aggravated sexual assault, or sexual assault, a person shall be punished as the offense attempted to be committed is by law punishable.~~

(b) Felonies. If the offense attempted to be committed is a felony other than those set forth in subsection ~~(a)~~(d) of this section, a person shall be punished by the less severe of the following punishments:

- (1) imprisonment for not more than 10 years or fined not more than \$10,000.00, or both; or
- (2) as the offense attempted to be committed is by law punishable.

(c) Misdemeanors. If the offense attempted to be committed is a misdemeanor, a person shall be imprisoned or fined, or both, in an amount not to exceed one-half the maximum penalty for which the offense so attempted to be committed is by law punishable.

(d) Serious violent felonies.

~~(1) A person who attempts to commit an offense and does an act toward the commission thereof, but by reason of being interrupted or prevented fails in the execution of the same, shall be punished as herein provided unless other express provision is made by law for the punishment of the attempt. If the offense attempted to be committed is murder, aggravated murder, kidnapping, arson causing death, human trafficking, aggravated human trafficking, aggravated sexual assault, or sexual assault, a person shall be punished as the offense attempted to be committed is by law punishable.~~

If the offense attempted to be committed is:

(i) aggravated murder as defined under § 2311 of this title, a person shall be punished as murder in the first degree is by law punishable pursuant to § 2303 of this title.

(ii) murder in the first degree as defined under § 2301 of this title, a person shall be punished as murder in the second degree is by law punishable pursuant to § 2303 of this title.

(iii) murder in the second degree, kidnapping, arson causing death, human trafficking, aggravated human trafficking, aggravated sexual assault, or sexual assault, the penalty shall not exceed 20 years imprisonment or a \$50,000 fine, or both.

(2) Notwithstanding subsection (a) of this section, a person is guilty of an attempt to commit an offense under this subsection if, with the purpose of committing the offense, he or she performs any act that is a substantial step towards the commission of the offense. A “substantial step” is conduct strongly corroborative of the actor’s intent to complete the commission of the offense and that advances beyond mere preparation.

(3) Conduct shall not be held to constitute a substantial step under Subsection (d)(2) 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 the commission of the crime;

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

(D) unlawfully entering a structure, vehicle, or enclosure contemplated for the commission of the crime;

(E) possessing materials to be employed in the commission of the crime that are:

(i) specially designed for such unlawful use; or

(ii) that can serve no lawful purpose under the circumstances.

(4) Defenses.

(A) It is no defense to a prosecution under this subsection that the offense attempted was, under the actual attendant circumstances, factually or legally impossible

of commission, if such offense could have been committed had the attendant circumstances been as the actor believed them to be.

(B) It shall be an affirmative defense to a charge under this subsection (d), if proven by a preponderance of the evidence, that the actor abandoned his or her effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his or her criminal purpose.

The establishment of such a defense does not affect the liability of an accomplice who did not join in such abandonment or prevention. 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.