

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

Model Penal Code § 5.05

§ 5.05. Grading of Criminal Attempt, Solicitation and Conspiracy;
Mitigation in Cases of Lesser Danger; Multiple Convictions Barred.

Currentness

(1) **Grading.** Except as otherwise provided in this Section, attempt, solicitation and conspiracy are crimes of the same grade and degree as the most serious offense that is attempted or solicited or is an object of the conspiracy. An attempt, solicitation or conspiracy to commit a [capital crime or a] felony of the first degree is a felony of the second degree.

(2) **Mitigation.** If the particular conduct charged to constitute a criminal attempt, solicitation or conspiracy is so inherently unlikely to result or culminate in the commission of a crime that neither such conduct nor the actor presents a public danger warranting the grading of such offense under this Section, the Court shall exercise its power under Section 6.12 to enter judgment and impose sentence for a crime of lower grade or degree or, in extreme cases, may dismiss the prosecution.

(3) **Multiple Convictions.** A person may not be convicted of more than one offense defined by this Article for conduct designed to commit or to culminate in the commission of the same crime.

Editors' Notes

EXPLANATORY NOTE

Subsection (1) establishes the general principle that attempt, solicitation and conspiracy are crimes of the same grade and degree as the most serious substantive offense that is their object. An exception is made for the most serious category of crime, where the inchoate offense is graded as a felony of the second degree.

Subsection (2) explicitly recognizes the power of the court to enter judgment and impose sentence for a crime of lower grade or degree than would otherwise be mandated by Subsection (1), or in extreme cases to dismiss the prosecution altogether. The occasions for the exercise of this authority are those in which the actor's conduct is so inherently unlikely to result or culminate in the commission of the crime that neither the conduct nor the actor presents a public danger sufficient to justify the normal application of Subsection (1).

Subsection (3) provides that a person may not be convicted of more than one inchoate offense for conduct designed to culminate in the commission of the same crime. *See also* Section 1.07(1)(b), which prohibits conviction of both the inchoate offense and the substantive offense that is its object. On the other hand, conduct that has multiple objectives, only some of which have been achieved, can be prosecuted under the appropriate section of Article 5. That is, a person may be convicted for one substantive offense and for attempt, solicitation or conspiracy in relation to a different offense.

For detailed Comment, *see* MPC Part I Commentaries, vol. 2, at 485.

LAW REVIEW AND JOURNAL COMMENTARIES

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

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

"Vicarious Aggravators". Sam Kamin, Justin Marceau 65 Florida Law Review 769 (2013).

LIBRARY REFERENCES

Conspiracy 36; Criminal Law 28, 29(1)-29(5), 44, 45

Westlaw Topic Nos. 91, 110

C.J.S. Conspiracy § 77; Criminal Law §§ 9, 13-15, 114-126; RICO (Racketeer Influenced and Corrupt Organizations) § 12

Notes of Decisions (25)

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