

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

Model Penal Code § 5.06

§ 5.06. Possessing Instruments of Crime; Weapons.

Currentness

(1) **Criminal Instruments Generally.** A person commits a misdemeanor if he possesses any instrument of crime with purpose to employ it criminally. "Instrument of crime" means:

(a) anything specially made or specially adapted for criminal use; or

(b) anything commonly used for criminal purposes and possessed by the actor under circumstances that do not negative unlawful purpose.

(2) **Presumption of Criminal Purpose from Possession of Weapon.** If a person possesses a firearm or other weapon on or about his person, in a vehicle occupied by him, or otherwise readily available for use, it is presumed that he had the purpose to employ it criminally, unless:

(a) the weapon is possessed in the actor's home or place of business;

(b) the actor is licensed or otherwise authorized by law to possess such weapon; or

(c) the weapon is of a type commonly used in lawful sport.

"Weapon" means anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for lawful uses that it may have; the term includes a firearm that is not loaded or lacks a clip or other component to render it immediately operable, and components that can readily be assembled into a weapon.

(3) **Presumptions as to Possession of Criminal Instruments in Automobiles.** If a weapon or other instrument of crime is found in an automobile, it is presumed to be in the possession of the occupant if there is but one. If there is more than one occupant, it is presumed to be in the possession of all, except under the following circumstances:

(a) it is found upon the person of one of the occupants;

(b) the automobile is not a stolen one and the weapon or instrument is found out of view in a glove compartment, car trunk, or other enclosed customary depository, in which case it is presumed to be in the possession of the occupant or occupants who own or have authority to operate the automobile;

(c) in the case of a taxicab, a weapon or instrument found in the passengers' portion of the vehicle is presumed to be in the possession of all the passengers, if there are any, and, if not, in the possession of the driver.

Editors' Notes

EXPLANATORY NOTE

Subsection (1) provides that it is a misdemeanor to possess instruments of crime with the purpose of employing them criminally. Intervention by law enforcement authorities to prevent such possession can be justified on much the same basis as that which underlies the general attempt, solicitation and conspiracy provisions dealt with elsewhere in Article 5. Paragraphs (a) and (b) define "instrument of crime."

Subsection (2) establishes a presumption of criminal purpose from the fact of possession of a weapon in certain circumstances, further delineated by Paragraphs (a), (b) and (c) and in the definition of "weapon."

Subsection (3) also creates a presumption, in this instance permitting the inference of possession from occupancy of an automobile in which an instrument of crime is found, subject to the exceptions delineated in Paragraphs (a), (b) and (c).

Serious constitutional questions are raised by the presumptions in Subsections (2) and (3). They are discussed in the Comment.

For detailed Comment, *see* MPC Part I Commentaries, vol. 2, at 494.

LAW REVIEW AND JOURNAL COMMENTARIES

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

LIBRARY REFERENCES

Burglary ¶ 12, 29; Criminal Law ¶ 26, 323

Westlaw Topic Nos. 67, 110

C.J.S. Burglary § 43-48, 83-90; Criminal Law §§ 44-45, 305, 696, 704, 708, 1110

Notes of Decisions (125)

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