

106TH CONGRESS
1ST SESSION

S. 413

To amend title 18, United States Code, to insert a general provision for criminal attempt.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 1999

Mr. DEWINE introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to insert a general provision for criminal attempt.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ESTABLISHMENT OF GENERAL ATTEMPT OF-**

4 **FENSE.**

5 Chapter 19 of title 18, United States Code, is
6 amended—

7 (1) in the chapter heading, by striking “Con-
8 spiracy” and inserting “Inchoate offenses”; and

9 (2) by adding at the end the following:

1 **“§ 374. Attempt to commit offense**

2 “(a) IN GENERAL.—Whoever, acting with the state
3 of mind otherwise required for the commission of an of-
4 fense described in this title, intentionally engages in con-
5 duct that, in fact, constitutes a substantial step toward
6 the commission of the offense, is guilty of an attempt and
7 is subject to the same penalties as those prescribed for
8 the offense, the commission of which was the object of the
9 attempt, except that the penalty of death shall not be im-
10 posed.

11 “(b) INABILITY TO COMMIT OFFENSE; COMPLETION
12 OF OFFENSE.—It is not a defense to a prosecution under
13 this section—

14 “(1) that it was factually impossible for the
15 actor to commit the offense, if the offense could
16 have been committed had the circumstances been as
17 the actor believed them to be; or

18 “(2) that the offense attempted was completed.

19 “(c) EXCEPTIONS.—This section does not apply—

20 “(1) to an offense consisting of conspiracy, at-
21 tempt, endeavor, or solicitation;

22 “(2) to an offense consisting of an omission, re-
23 fusal, failure of refraining to act;

24 “(3) to an offense involving negligent conduct;

25 or

1 “(4) to an offense described in section 1118,
2 1120, 1121, or 1153 of this title.

3 “(d) AFFIRMATIVE DEFENSE.—

4 “(1) IN GENERAL.—It is an affirmative defense
5 to a prosecution under this section, on which the de-
6 fendant bears the burden of persuasion by a prepon-
7 derance of the evidence, that, under circumstances
8 manifesting a voluntary and complete renunciation
9 of criminal intent, the defendant prevented the com-
10 mission of the offense.

11 “(2) DEFINITION.—For purposes of this sub-
12 section, a renunciation is not ‘voluntary and com-
13 plete’ if it is motivated in whole or in part by cir-
14 cumstances that increase the probability of detection
15 or apprehension or that make it more difficult to ac-
16 complish the offense, or by a decision to postpone
17 the offense until a more advantageous time or to
18 transfer the criminal effort to a similar objective or
19 victim.”.

20 (b) TECHNICAL AND CONFORMING AMENDMENT.—

21 The analysis for chapter 19 of title 18, United States
22 Code, is amended by adding at the end the following:

“374. Attempt to commit offense.”.

1 **SEC. 2. RATIONALIZATION OF CONSPIRACY PENALTY AND**
2 **CREATION OF RENUNCIATION DEFENSE.**

3 Section 371 of title 18, United States Code, is
4 amended—

5 (1) by striking the second undesignated para-
6 graph; and

7 (2) in the first undesignated paragraph—

8 (A) by striking “If two or more” and in-
9 serting the following:

10 “(a) IN GENERAL.—If 2 or more”; and

11 (B) by striking “either to commit any of-
12 fense against the United States, or”; and

13 (3) by adding at the end the following:

14 “(b) CONSPIRACY.—If 2 or more persons conspire to
15 commit any offense against the United States, and 1 or
16 more of such persons do any act to effect the object of
17 the conspiracy, each shall be subject to the same penalties
18 as those prescribed for the most serious offense, the com-
19 mission of which was the object of the conspiracy, except
20 that the penalty of death shall not be imposed.”.

○