

108TH CONGRESS  
1ST SESSION

# S. 147

To amend title 18 of the United States Code to add a general provision  
for criminal attempt.

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IN THE SENATE OF THE UNITED STATES

JANUARY 13, 2003

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

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## A BILL

To amend title 18 of the United States Code to add 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. SHORT TITLE**

4       This Act may be cited as the “General Attempt Pro-  
5       vision Act”.

6       **SEC. 2. ESTABLISHMENT OF GENERAL ATTEMPT OFFENSE.**

7       (a) Chapter 19 of title 18, United States Code, is  
8       amended—

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

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

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

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

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

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

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

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

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

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

1 “(3) to an offense involving negligent conduct;  
2 or

3 “(4) to an offense described in section 1118,  
4 1120, 1121, or 1153.

5 “(d) AFFIRMATIVE DEFENSE.—

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

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

22 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
23 The analysis for chapter 19 of title 18, United States  
24 Code, is amended by adding at the end the following:

“374. Attempt to commit offense.”.

1 **SEC. 3. RATIONALIZATION OF CONSPIRACY PENALTY AND**  
2 **CREATION OF RENUNCIATION DEFENSE.**

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

5 (1) in the first undesignated paragraph—

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

8 “(a) IN GENERAL.—If 2 or more”; and

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

11 (2) by striking the second undesignated para-  
12 graph; 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.”.

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