SENATE DOCKET, NO. 48 FILED ON: 1/10/2013

SENATE . . . . . No. 772

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to the definition of attempt in criminal cases.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael O. Moore	*Second Worcester*

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SENATE . . . . . No. 772

By Mr. Michael O. Moore, a petition (accompanied by bill, Senate, No. 772) of Michael O. Moore for legislation relative to the definition of attempt in criminal cases. The Judiciary.

The Commonwealth of Massachusetts

An Act relative to the definition of attempt in criminal cases.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 6 of Chapter 274 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 1 through 3, the words “by doing any act toward its commission, but fails in its perpetration, or is intercepted or prevented in its perpetration” and inserting in place thereof the following:- , as defined in section 6A .

SECTION 2. Chapter 274 of the General Laws, as so appearing, is hereby further amended by inserting after Section 6 the following new section:-

Section 6A. (a) A person is guilty of an attempt to commit a crime if, acting with the intent otherwise required for commission of the crime, he:

(1) purposely engages in conduct that would constitute the crime if the attendant circumstances were as he believes them to be; or

(2) when causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part; or

(3) purposely does or omits to do anything that, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

(b) Conduct shall not be held to constitute a substantial step under Subsection (a)(3) unless it is strongly corroborative of the actor's criminal purpose. Without negativing 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:

(1) lying in wait, searching for or following the contemplated victim of the crime;

(2) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;

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

(4) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;

(5) possession of materials to be employed in the commission of the crime, that are specially designed for such unlawful use or that can serve no lawful purpose of the actor under the circumstances;

(6) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, if such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances;

(7) soliciting an innocent agent to engage in conduct constituting an element of the crime.

(c) A person who engages in conduct designed to aid another to commit a crime that would establish his complicity if the crime were committed by such other person, is guilty of an attempt to commit the crime, although the crime is not committed or attempted by such other person.

(d) When the actor's conduct would otherwise constitute an attempt under subsection (a)(2) or (a)(3), it is an affirmative defense that he abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The establishment of such defense does not, however, 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.