

Ask The Lawyer: Is It A Crime, Yet?

Q:

At what point does an attempt to do something illegal become criminal, even if you don't pull off the crime?

A:

In the military, anyone who tries to commit a crime, regardless of whether he or she actually does anything else illegal, commits a crime. Service members violate Article 80 of the Uniform Code of Military Justice when they go beyond the stages of planning and preparation and overtly act with the intent of committing a UCMJ offense.

Article 80 charges, referred to as "attempts," often come into play in sexual assault, child abuse, drug distribution, and larceny cases. With Article 80, it does not matter if the accused ever completed the attempted offense. The attempt must represent "a direct movement toward commission," according to the Manual for Courts-Martial.

It does not matter if a service member attempted to commit a crime and there was no chance he or she could pull it off. Perhaps the goods a person wanted to steal had been shipped elsewhere. The task of government prosecutors is showing that substantial steps were taken to commit an offense. Meanwhile, depending on the circumstances, the military law attorney representing the accused might argue that there was no intent to commit a crime or that any steps taken did not go past the initial preparatory phase.

Voluntary abandonment is another defense that could be raised, if the service member completely withdraws from an illegal act. "Intent" here is also important to the defense. The perpetrator's intent in voluntarily abandoning a crime must stem from a genuine belief that the act is wrong not from a belief that the actor would get caught or that he or she would have a better chance of succeeding at another time, according to the Manual for Courts-Martial.

In some cases, an attempt may constitute a lesser included offense of the same principle crime. For example, the lesser included offense of attempted larceny is wrongful appropriation, a violation of Article 121, according to the Manual for Courts-Martial. Service members should remember that those found guilty of attempts to commit crimes will in most cases be at risk for the same maximum punishment that the UCMJ allows for the committed offense. Anyone facing an Article 80 charge should immediately consult a military law attorney.

Mathew B. Tully is an Iraq War veteran and founding partner of the law firm Tully Rinckey PLLC. E-mail questions to askthelawyer@fedattorney.com

. The information in this column is not intended as legal advice.