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Model Penal Code, No-Knock Search Warrants, and Robbery

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Contents

Model Penal Code **2**
No-Knock Search Warrants **3**
Robbery **5**

Model Penal Code

The Model Penal Code (MPC) is a sample set of criminal laws. It was released in 1962 by the American Law Institute (ALI), an organization of legal scholars, lawyers, and judges. In the early 1950s, an ALI advisory committee of experts in law, psychiatry, and criminology examined U.S. criminal law, and the final product of this examination was the MPC. The committee had two goals: to better organize the criminal law, and to facilitate fairer enforcement of criminal statutes.

U.S. criminal law was a haphazard collection of criminal statutes enacted by state legislatures and common-law principles interpreted by state courts. Its lack of clarity, precision, and predictability created problems for judges, lawyers, and criminal defendants. The ALI committee reasoned that an organized, clearly defined criminal code would create a fairer criminal justice system. The committee also sought to change the penal system's correctional focus, which was on punishing criminal conduct. Because the ALI committee believed in employing a wider variety of correctional methods, the MPC encourages rehabilitating criminals when practical, and incapacitating them when necessary.

The MPC introduced a new criminal code format, and includes a general part and a special part. The general part outlines the elements of a criminal offense. The defendant must voluntarily commit an act, either purposely, knowingly, recklessly, or negligently, and this act must cause a particular result. In addition, the general part defines valid criminal defenses, including justification (such as self-defense) and excuse (such as legal insanity). It also discusses inchoate crimes, including attempt, solicitation, and conspiracy. An inchoate crime only requires that an underlying crime's preparatory act is completed to establish criminal liability. Due to the MPC's correctional focus, it punishes inchoate and completed crimes identically, since they require the same mental state.

The MPC's special part defines specific criminal offenses. It features broad categories, including crimes against the person and crimes against property, and multiple subcategories. There are four types of crimes against the person: (1) homicide; (2) assault, endangerment, and threats; (3) kidnapping and related offenses; and (4) sexual offenses. There are five types of crimes against property: (1) arson, mischief, and other property destruction; (2) burglary and criminal intrusion; (3) robbery; (4) theft; and (5) forgery and fraud.

Many states have adopted portions of the MPC when revising their criminal codes. However, some states have not adopted the MPC at all, and their criminal codes still reflect common law principles. Despite this division, two important MPC provisions have been commonly rejected. First, most states punish completed crimes more harshly than inchoate crimes. Second, most states have kept the common law felony murder rule, rejected by the MPC, which allows any killing resulting from the commission of a felony to be charged as a murder.

While the ALI continues to release updates to the MPC, some legal scholars have called for it to be completely overhauled, and for any new version to include suggested statutes for modern crimes, such as narcotics- related offenses, that are not in the 1962 version.

For more information:

American Law Institute. *The Model Penal Code.*

Robinson, Paul H. & Dubber, Markus D. *The American Model Penal Code: A Brief Overview*. New Criminal Law Review, v. 10, no. 3 (2007)

No-Knock Search Warrants

Under the Fourth Amendment of the U.S. Constitution, the police may not conduct unreasonable searches and seizures. Because people have a reasonable expectation of privacy in their residential dwellings, the police are constitutionally prohibited from arbitrarily entering and searching someone's home.

Generally, the police must get a search warrant from a court before conducting a residential search. When applying for this warrant, the police must show that they have probable cause to believe that evidence of criminal activity is on the premises. They must also describe, with particularity, the premises they will search and the items they will seize.

A warrantless search is unconstitutional, because it is unreasonable under the Fourth Amendment, unless it falls under one of a few legal exceptions to the search warrant requirement. Items seized in an unconstitutional warrantless search are not admissible as evidence in a criminal trial.

Once the police get a search warrant, they must generally follow the common law "knock-and-announce" rule when they are executing it. This rule prohibits the police from entering the premises to conduct a search without knocking and announcing their presence and intention. If they fail to follow this rule, the search can be deemed unreasonable under the Fourth Amendment.

However, sometimes this rule is impractical, especially if it is likely that evidence will be destroyed or the safety of the officers will be jeopardized. Accordingly, a judge has the option to issue a "no-knock" search warrant, which authorizes the police to enter and search the premises without knocking or announcing their presence first.

In the 1997 case of *Richards v. Wisconsin*, the U.S. Supreme Court held that no-knock search warrants are not unconstitutional *per se*. However, the Court did establish that the police must have a "reasonable suspicion" that makes a no-knock warrant necessary. *Richards* authorizes a trial court to analyze the facts and circumstances of each individual case to determine whether sufficient reasonable suspicion existed to justify issuing a no-knock warrant.

Since *Richards*, trial courts have attempted to establish the requirements for this reasonable suspicion standard. They generally agree that the police must show that there are exigent, or extremely urgent, circumstances that require a no-knock entry. They also agree that the police must provide more than a "boilerplate" description of the situation the officers will face when they serve the warrant. Instead, the police must provide the specific facts behind their suspicion, so that the judge can determine whether the suspicion is reasonable.

No-knock search warrants are often upheld because the police reasonably suspect that it would be dangerous to announce their presence. To demonstrate this suspicion, the police can offer criminal records of people who may be in the residence when the search warrant is executed. These are especially persuasive if they show multiple arrests for violent crimes.

The police can also get a no-knock search warrant if they show a reasonable suspicion that the residence's inhabitants will destroy evidence if they have notice of the officers' presence. This suspicion is often raised in narcotics and computer crimes cases. For example, if there is surveillance information about narcotics in a remote part of the premises, the officers' suspicion that the narcotics will be destroyed before they can be seized is probably reasonable enough to justify issuing a no-knock warrant.

The officers' search-related training and experience may be sufficient to establish that the suspicion is reasonable in these cases as well.

For More Information:

David M. Hastings, *Sufficiency of Showing to Support No-Knock Search Warrants.* American Law Reports 5th, Electronic Annotation #6 (2003).

Investigations and Police Practices. Georgetown Law Journal Annual Review of Criminal Procedure, v. 37 (2008).

Ric Simmons, *Can* Winston *save us from Big Brother? The Need for Judicial Consistency in Regulating Hyper-Intrusive Searches*. Rutgers Law Review, v. 55, p. 547 (2003).

Robbery

Robbery is a crime in which one uses either a threat of fear, or actual physical force, to take and permanently carry away property of value belonging to someone else. Armed robbery occurs when one threatens to use, or actually uses, a dangerous weapon during the commission of a robbery.

Whereas most crimes are either against property (theft), or against the person (homicide, assault, battery), robbery is a crime against both. However, since robbery requires a taking, theft is an included offense, and one cannot be charged with both theft and robbery for the same act.

Any accompanying person who encourages or assists the defendant can be charged with robbery. However, robbery charges cannot be brought against people who receive property taken during a robbery but did not know about or participate in the the crime.

In the United States, robbery is generally a matter of state law, although there are federal robbery statutes. Robberies of federally-insured banks are punishable under the Federal Bank Robbery Act (18 U.S.C. § 2113), while robberies that interfere with the movement of commerce are chargeable under the Hobbs Act (18 U.S.C. § 1951(a)).

Some states use the common-law definition of robbery. In California, for example, robbery is the "felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." This law has three requirements: (1) the property must be in the sensory presence of the person from whom it is taken, (2) this person must have a possessory or custodial interest in the property, and (3) the robber must physically threaten or injure this person.

Under the Model Penal Code (MPC), a robbery occurs when, "in the course of committing a theft," a person inflicts or threatens serious bodily injury on or against "another." The victim need not have a possessory interest in the property.

Some states have updated their criminal codes to include the MPC's robbery definition. However, these states differ on the number of counts allowed for a business robbery when only the business's property is taken. Some states use the taking as the unit of prosecution, and only allow one robbery count to be brought regardless of how many people are threatened. However, states that consider robbery to be a crime against the person authorize one robbery count for each employee (constructive possessor) threatened. In Pennsylvania, an additional count may be charged for each customer threatened as well.

Claim of right is a legitimate defense to a robbery charge, and it will succeed if the defendant can show either ownership of the property taken, entitlement to possession of the property, or a legitimate good-faith belief in his or her ownership or possessory right. Other robbery defenses include duress and involuntary intoxication.

Grades or degrees are used to distinguish robberies of various severity. Second degree robbery is a taking under a general threat of force, such as a verbal threat to hurt someone unless he or she surrenders the property. If physical force is actually exerted, or if a weapon is displayed, the charge can be elevated to first degree robbery.

Many states have felony murder laws that include robbery as a qualifying felony. In those jurisdictions, if a death results from the commission of the robbery, the defendant can be charged with

first degree felony murder. Some states that permit capital punishment consider robbery to be a special circumstance or aggravating factor, which makes a defendant convicted of committing a murder during a robbery eligible for the death penalty.

For more information:

Joshua Dressler, *Understanding Criminal Law (4th ed.)*. Newark, NJ: LexisNexis, 2006.

Rosemary Gregor & Jack Levin, *American Jurispridence 2d: Robbery*. Eagan, MN: West Group, 2003.