

## 8.17. Attempted Sex Crime Against a Child—Substantial Step of Travelling

### Instruction No. 2.0800.

#### I.C. 35-41-5-1(c).

The crime of *[name object sex crime ]* is defined by statute as *[insert definition of object sex crime]*. A person attempts to commit a *[name object sex crime]* when, acting with the culpability required for commission of the *[name object sex crime]*, [he] [she] engages in conduct that constitutes a substantial step toward commission of the *[name object crime]*. A person engages in conduct that constitutes a substantial step toward commission of the crime of *[name object sex crime]* if the person, with the intent to commit *[name object sex crime]* [against a child] [an individual the person believes to be a child]:

(1) communicates with the child or individual the person believes to be a child concerning the sex crime; and

(2) travels to another location to meet the child or individual the person believes to be a child].

The crime of attempted *[name object crime]* is [Level *(insert grade)* felony] [Class *(insert grade)* misdemeanor].

Before you may convict the Defendant of attempted *[name object sex crime]*, the State must have proved each of the following elements beyond a reasonable doubt:

1.The Defendant

2.acting with *[the culpability required to commit the crime of [name object sex crime]*, which is defined as:

*[insert elements of object crime: i.e., knowingly or intentionally*

*element*

*element*

*element]*

3.did *[set out conduct alleged in charge as substantial step]*, which the jury finds was conduct constituting a substantial step toward the commission of the crime of *[name object crime]*

[or]

*(if alleged)* with the intent to commit *(name object sex crime)* against *[name child]* [an individual the Defendant believed to be a child], did

communicate with [*name the child*] [the individual the Defendant believed to be a child] concerning the (*name object sex crime*)

and

travelled to another location, (*name location alleged*), to meet [*name the child*] [an individual the person believes to be a child].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of the crime of attempted [insert sex crime attempted], a [Level (*insert grade*) felony] [Class (*insert grade*) misdemeanor], charged in Count .

### Comments

The essential elements of the object crime *must* be set out in an attempt instruction. [\*Smith v. State\*, 459 N.E.2d 355 \(Ind. 1984\)](#).

It is for the jury to decide whether the conduct alleged to be the “substantial step” constitutes a substantial step toward the commission of the object crime beyond a reasonable doubt. [\*Washington v. State\*, 517 N.E.2d 77, 79 \(Ind. 1987\)](#) (“Whether a ‘substantial step’ has occurred, for purposes of prosecuting an attempt crime, is a question of fact to be decided by the jury based on the particular circumstances of each case.”).