

8.5. Attempted_____ (Non-murder)

Instruction No. 2.0100. Attempted _____ [for attempted murder, use Instruction No. 2.0200 instead.]

I.C. 35-41-5-1(a), [*Statute for object crime*].

The crime of _____ [*name object crime*] is defined by statute as _____ [*insert definition of object crime*]. A person attempts to commit a _____ [*name object crime*] when, acting with the culpability required for commission of the _____ [*name object crime*], [he] [she] engages in conduct that constitutes a substantial step toward commission of the _____ [*name object crime*]. The crime of attempted _____ [*name object crime*] is a [Level _____ (*insert grade*) felony] [Class _____ (*insert grade*) misdemeanor].

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

1. The Accused
2. acting with the culpability required to commit the crime of _____ [*name object 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*]
4. which was conduct constituting a substantial step toward the commission of the crime of _____ [*name object crime*].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Accused not guilty of the crime of attempted _____ [*insert 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).

Any crime other than murder can be attempted with either the "knowingly" or the "intentionally" mental state. [*Richeson v. State*, 704 N.E.2d 1008 \(Ind. 1998\)](#) .

It is for the jury to decide, as a matter of law, whether a "substantial step" has occurred for purposes of prosecuting an attempt crime. *Washington v. State*, 517 N.E.2d 77, 79 (Ind. 1987).