

6.3 ATTEMPTED FELONY MURDER [ENUMERATED FELONY] [NON-ENUMERATED FELONY]

§ 782.051(1) and (2), Fla. Stat.

In the absence of an express concession that the attempted homicide was not excusable or justified, the trial judge must also read Instruction 6.1, Introduction to Attempted Homicide.

To prove the crime of Attempted Felony Murder, the State must prove the following three elements beyond a reasonable doubt:

- 1.** (Defendant) **[committed] [attempted to commit]** a (crime alleged).
- 2.** **While engaged in the [commission] [attempted commission] [escape from the immediate scene] of (crime alleged), the defendant [committed] [aided or abetted] an intentional act that is not an essential element of (crime alleged).**
- 3.** **This intentional act could have but did not cause the death of (victim).**

(Crime alleged) **is defined by Florida law as** (define the crime).

To convict the defendant of Attempted Felony Murder, it is not necessary for the State to prove that [he] [she] had a premeditated design or intent to kill.

Give only if applicable.

An attempt to commit a crime requires an intent to commit the crime and an overt act that goes beyond mere preparation.

Berger v. State, 259 So. 3d 933 (Fla. 5th DCA 2018); State v. Coker, 452 So. 2d 1135 (Fla. 2d DCA 1984).

The line between mere preparation and an overt act is a question of fact for you to decide. Mere preparation consists of devising or arranging the means or measures necessary to commit the crime. An overt act consists of some movement toward committing the crime after mere preparation. An overt act need not be the last possible act toward completing the crime.

If the underlying felony or attempted felony is charged as a separate count, read instruction 3.12(d) (Legally Interlocking Counts). Failure to do so may result in an impermissible inconsistent verdict. See, e.g., Brown v. State, 959 So. 2d 218 (Fla. 2007).

Lesser Included Offenses

6.3 ATTEMPTED FELONY MURDER [ENUMERATED FELONY] [NON-ENUMERATED FELONY] —§ 782.051(1) AND (2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Attempted Manslaughter by Act		782.07 & 777.04	6.6
	Aggravated Battery	784.045	8.4
	Felony Battery	784.041(1)	8.5
	Aggravated Assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

§ 782.051(1), Fla. Stat., applies where the defendant is alleged to have committed or attempted to commit a felony enumerated in § 782.04(3), Fla. Stat.

§ 782.051(2), Fla. Stat., applies where the defendant is alleged to have committed or attempted to commit a felony not enumerated in § 782.04(3), Fla. Stat.

A charging document that tracks the language of the Attempted First-Degree Premeditated Murder statute does not charge Attempted Felony Murder. *See Weatherspoon v. State*, 214 So. 3d 578 (Fla. 2017).

See Instruction 5.1 for the affirmative defense of renunciation.

See Instruction 6.7 for the § 782.065, Fla. Stat., reclassification when the victim is a law enforcement officer, correctional officer, etc. and instruction 3.15 for the scoresheet multiplier in § 775.0823, Fla. Stat.

This instruction was adopted in 2007 [962 So. 2d 310] and amended in 2014 [137 So. 3d 995], 2018 [236 So. 3d 282], and on December 15, 2023.