

5.1 ATTEMPT TO COMMIT CRIME

§ 777.04(1), Fla. Stat.

To prove (defendant) **attempted to commit the crime of** (name of crime attempted), **the State must prove the following three elements beyond a reasonable doubt:**

1. (Defendant) **intended to commit the crime of** (name of crime attempted).
2. (Defendant) **committed an overt act toward the commission of** (name of crime attempted) **that went beyond mere preparation.**
3. (Defendant) **failed to complete the** (name of crime attempted).

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.

The crime of (crime attempted) **is defined as** (insert elements of crime attempted).

Give if applicable. Affirmative Defense. § 777.04(5)(a), Fla. Stat. Carroll v. State, 680 So. 2d 1065 (Fla. 3d DCA 1996). *Harriman v. State*, 174 So. 3d 1044 (Fla. 1st DCA 2015).

It is a defense to the crime of Attempted (name of crime attempted) **if the defendant abandoned [his] [her] attempt to commit the offense or otherwise prevented its commission, under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose.**

Renunciation is not complete and voluntary where the defendant failed to complete the crime because of unanticipated difficulties, unexpected resistance, a decision to postpone the crime to another time, or circumstances known by the defendant that increased the probability of being apprehended.

If you find that the defendant proved by a preponderance of the evidence that [he] [she] abandoned [his] [her] attempt to commit the offense or otherwise prevented its commission, under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose, you should find [him] [her] not guilty of Attempted (name of crime attempted).

If the defendant failed to prove by a preponderance of the evidence that [he] [she] abandoned [his] [her] attempt to commit the offense or that [he] [she] otherwise prevented its commission, under circumstances indicating a complete

and voluntary renunciation of [his] [her] criminal purpose, you should find [him] [her] guilty of Attempted (name of crime attempted) **if all the elements of the charge have been proven beyond a reasonable doubt.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

As of January 2025, no case law addressed the issue of whether renunciation remains a defense to an attempt to commit a crime where some harm was done.

§ 777.04(1), Fla. Stat., includes the phrase “...or is intercepted or prevented in the execution thereof...” If needed, element #3 should be altered to cover one or both of those concepts.

This instruction was adopted in 1981 and amended in 2017 [213 So. 3d 680], 2018 [238 So. 3d 192], on December 15, 2023, and on February 21, 2025.