

ATTEMPT TO COMMIT A CRIME
PENAL LAW § 110.00

The _____ count is attempt to commit the crime of (attempted crime).

I shall instruct you first on the definition of the crime of (attempted crime). Then I shall define for you an attempt to commit a crime. Finally, I shall put both definitions together and list for you the elements of attempt to commit the crime of (attempted crime).

[NOTE: Here read statutory definition of crime and any defined terms as set forth in CJI for that crime.]

Under our law, a person is guilty of an attempt to commit a crime when, with intent to commit a crime, he or she engages in conduct which tends to effect the commission of such crime.¹

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "intent" and "tends to effect."

INTENT means a conscious objective or purpose. Thus, a person acts with intent to commit a crime when his or her conscious objective or purpose is to commit that crime.²

Conduct which TENDS TO EFFECT the commission of a crime means conduct which comes dangerously close or very near to the completion of the intended crime.

If a person intends to commit a crime and engages in

¹ See Penal Law §110.00.

² See Penal Law § 15.05(1). An "expanded" definition of "intent" is available in the General Charges section under Culpable Mental States.

conduct which carries his or her purpose forward within dangerous proximity to the completion of the intended crime, he or she is guilty of an attempt to commit that crime. It does not matter that the intended crime was not actually completed.

The person's conduct must be directed toward the accomplishment of the intended crime. It must go beyond planning and mere preparation, but it need not be the last act necessary to effect the actual commission of the intended crime. Rather, the conduct involved must go far enough that it comes dangerously close or very near to the completion of the intended crime.³

[NOTE: Add where *factual or legal impossibility is an issue*:

It is no defense in a prosecution for an attempt to commit a crime that the intended crime was, under the circumstances, factually or legally impossible to commit, if such crime could have been committed had the circumstances been as the defendant believed them to be.]⁴

³ See *People v. Mahoubian*, 74 N.Y.2d 174 (1989); *People v. Warren*, 66 N.Y.2d 831 (1985).

⁴ See Penal Law § 110.10.

NOTE: Select one of the following two conclusions:⁵

I

[If intent applies to every element of the crime, conclude as follows:

In order for you to find the defendant guilty of an attempt to commit the crime of (specify), the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, both of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (name of defendant), intended to commit the crime of (specify); and
2. That the defendant engaged in conduct which tended to effect the commission of that crime.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of attempt to commit the crime of (specify) under the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of attempt to commit the crime of (specify) under the _____ count.]

⁵ *People v. Miller*, 87 NY2d 211 (1995), held that a defendant could be guilty of an attempt to commit Robbery in the First Degree, under PL §§ 20.00 and 160.15(1), provided he intended to forcibly steal property, even though he did not intend the serious physical injury to a non-participant which resulted; intent applied only to the "core" crime of robbery, not the non-intentional "aggravating element"). When intent applies to every element of the attempted crime, use or adapt the first alternative in the text. In the *Miller* situation, where a defendant may be guilty of an attempt although his intent does not encompass every element of the crime, use or adapt the second alternative.

//

[If there are some elements of the attempted crime to which intent does not apply, conclude as follows:

In order for you to find the defendant guilty of an attempt to commit the crime of (specify), the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (name of defendant), intended to commit the crime of (specify core crime);
2. That the defendant engaged in conduct which tended to effect the commission of that crime; and
3. That (specify strict liability element which raises degree of intended crime).⁶

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of attempt to commit the crime of (specify) under the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of

⁶ For example, for Attempted Robbery in the First Degree under Penal Law §§ 20.00 and 160.15(1), the "core crime" in the first element would be "robbery" and the third element would read:

3. That in the course of the attempted commission of the crime [or of immediate flight therefrom], the defendant [or another participant in the crime] caused serious physical injury to (specify), and (specify) was not a participant in the robbery.

attempt to commit the crime of (specify) under the _____ count.