

**ATTEMPT**  
**(N.J.S.A. 2C:5-1)**

**ALTERNATIVE I**

**[To be used when defendant is charged with Attempt]**

The indictment charges that the defendant attempted to commit the crime of \_\_\_\_\_.

**ALTERNATIVE II**

[If the facts raise the question whether the crime was completed, the jury should be instructed to "turn to a consideration of whether an attempt to commit the crime has been established."<sup>1</sup>]

The indictment charges that the defendant committed the crime of \_\_\_\_\_. If you find that the State has failed to prove beyond a reasonable doubt that the crime of \_\_\_\_\_ was committed, then you should consider whether an attempt to commit the crime has been established.

**[If “knowing” or lesser culpability would have sufficed for the completed crime, add the following.]**

Before I explain the definition of an attempt, let me explain an important difference between an attempt and the crime of \_\_\_\_\_. Although it is possible to commit the crime of \_\_\_\_\_ with [knowledge/recklessness], to be guilty of an attempt the defendant must act with purpose. In other words, the defendant must have the purpose to commit the crime of \_\_\_\_\_, in order to be guilty of attempting it.<sup>2</sup>

**[MAIN CHARGE]**

The law provides that a person is guilty of an attempt to commit a crime if the person:<sup>3</sup>

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<sup>1</sup> N.J.S.A. 2C:1-8d(2).

<sup>2</sup> State v. Rhett, 127 N.J. 3, 6-7 (1992); State v. Robinson, 136 N.J. 476, 485-86 (1994).

<sup>3</sup> Because all attempts must be purposeful, State v. Rhett, 136 N.J. 476; State v. Robinson, 127 N.J. 3, and because other portions of the statute include the requirement of purpose, the language in N.J.S.A. 2C:5-1a, “acting with the kind of culpability otherwise required for the commission of the crime,” should not be charged.

**[Select the appropriate section]**

**[(1) Attempt - Impossibility]**

Purposely engages in conduct which would constitute the crime if the attendant circumstances were as a reasonable person would believe them to be;

**[or]**

**[(2) Attempt - When Causing a Particular Result is an Element of the Crime]**

Does or omits to do anything with the purpose of causing [result] without further conduct on (his/her) part.

**[or]**

**[(3) Attempt-Substantial Step]**

Purposely does or omits to do anything which, under the circumstances as a reasonable person would believe them to be, is an act or omission constituting a substantial step in the course of conduct planned to culminate in (his/her) commission of the crime.

Thus, in order to find the defendant guilty of a criminal attempt, the State must prove two elements beyond a reasonable doubt:

**[Select the appropriate Section]**

**[(1) Attempt - Impossibility]**

The first element is that the defendant acted purposely. A defendant acts purposely with respect to the nature of (his/her) conduct or a result thereof if it is (his/her) conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if (he/she) is aware of the existence of such circumstances or (he/she) believes or hopes that they exist.

The second element is that the defendant engaged in conduct which would constitute the crime of \_\_\_\_\_ had the facts been as a reasonable person would have believed them to be.

**[Here define the crime allegedly attempted if it has not been defined already, or refer jurors to the definition previously charged.]**

If the accused purposely engaged in conduct that would constitute the crime of \_\_\_\_\_ had the facts been as a reasonable person would have believed them to be,

you should consider that conduct as evidence of guilt of attempt to commit\_\_\_\_\_. It does not matter that the defendant failed to accomplish (his/her) intended result because the facts were not as a reasonable person would have believed them to be; it is no defense that the defendant could not succeed in reaching (his/her) intended result because of circumstances unknown to (him/her). However, there cannot be an attempt to commit a crime unless the attempt, if completed, would have constituted the crime.<sup>4</sup>

**[or]**

**[(2) When Causing a Particular Result is an Element of the Crime.]**

First, that the defendant had the purpose to cause [here state the result that is an element of the alleged attempted crime]. A defendant acts purposely with respect to the nature of (his/her) conduct or a result thereof if it is (his/her) conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if (he/she) is aware of the existence of such circumstances or (he/she) believes or hopes that they exist.

The second element is that the defendant did or omitted to do anything to cause [state the result which is an element] without further conduct or action on (his/her) part. Where the accused has done all that (he/she) believes necessary to cause [state the result which is an element], you should consider that as evidence of guilt of an attempt to commit\_\_\_\_\_.

**[or]**

**[(3) Substantial Step]**

First, that the defendant had the purpose to committing the crime of \_\_\_\_\_. A defendant acts purposely with respect to the nature of (his/her) conduct or a result thereof if it is (his/her) conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if (he/she) is aware of the existence of such circumstances or (he/she) believes or hopes that they exist.

The second element is that the defendant purposely did or omitted to do anything, which, under the circumstances as a reasonable person would believe them to be, is an act or omission that is a substantial step in the course of conduct planned to culminate in (his/her) commission of the crime. However, the step taken must strongly show the defendant's criminal purpose. That is, the step taken must be substantial and not just a very remote preparatory act, and must show

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<sup>4</sup> Final Report of the New Jersey Criminal Law Revision Commission, Vol. II: Commentary, pp.114-115, quoting from State v. Moretti, 52 N.J. 182, 186-90 (1968). N.J.S.A. 2C:5-1a(1) rejects outright the defense of impossibility.

that the accused has a firmness of criminal purpose.

**[Charge in Every Case Except One Involving the Renunciation Defense:]**

If you find that the State has proven each of these elements beyond a reasonable doubt, then you must find the defendant guilty of an attempt to commit\_\_\_\_\_. However, if you find that the State failed to prove any of these elements beyond a reasonable doubt, then you must find the defendant not guilty of an attempt to commit\_\_\_\_\_.

**[Charge Where Appropriate]**

**RENUNCIATION OF CRIMINAL PURPOSE**

**[To be used when the defendant's conduct would otherwise constitute an attempt under Section 2 or 3 above]**

As part of the defendant's denial of guilt, the defendant raised the defense of renunciation of criminal purpose.

The accused must prove, by a preponderance of the evidence, that (he/she) abandoned (his/her) effort to commit the crime or otherwise prevented its commission under circumstances that show a complete and voluntary decision to renounce (his/her) criminal purpose. The abandonment of the criminal effort must begin with the defendant and not be forced upon (him/her) by some outside event, such as police intervention.<sup>5</sup> Renunciation of criminal purpose is not voluntary if the reason for it is that it seems more likely that defendant will be detected or caught, or the objective seems more difficult than it did at the beginning of the course of conduct. Renunciation is not complete if the defendant only decides to postpone the criminal conduct to a better time or to focus on another but similar objective or victim. If mere abandonment of the criminal effort is not enough to prevent the offense, then the defendant must have taken further and affirmative steps that actually prevented the commission of the offense.<sup>6</sup>

As I stated, the defendant must prove renunciation by a preponderance of the evidence. I previously explained that the State has the burden of proving every element of the crime(s) charged beyond a reasonable doubt. The burden of proving renunciation by a preponderance of the evidence is a lesser burden. It simply means that the defendant has the burden of establishing that the evidence supporting renunciation is more likely true than not. Another way to describe it

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<sup>5</sup> Code Commentary at 124.

<sup>6</sup> Id. at 125.

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is the greater weight of the believable evidence in the case. It does not necessarily mean the evidence of the greater number of witnesses, but rather, the evidence that carries the greater convincing power in your minds. I remind you, however, that the burden of proving every element of the attempt to commit\_\_\_\_\_as I have previously defined it is always on the State and never on the defendant.

If you find that the State has failed to prove any one of these elements beyond a reasonable doubt, then you must find the defendant not guilty of an attempt to commit\_\_\_\_\_. Also, if you find the State has proven each of these elements beyond a reasonable doubt, but that the defendant has established by a preponderance of the evidence that (he/she) renounced (his/her) criminal purpose, then you must find the defendant not guilty. However, if you find that the State has proven each of these elements beyond a reasonable doubt and the defendant has failed to establish renunciation by a preponderance of the evidence, then you must find the defendant guilty.