

Ala. Code 1975, § 13A-12-203

Attempt To Commit Controlled Substance Crime

The defendant is charged with attempted **[Insert name of controlled substance crime solicited]**.

A person commits the crime of attempted **[Insert name of controlled substance crime solicited]**, if, with the intent to commit a specific offense, **[Insert name of controlled substance crime attempted]**, he/she does an overt act towards the commission of such offense and the crime attempted is a controlled substance crime.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The defendant did an overt act, **[Insert overt act]**, to commit a controlled substance crime, **[Insert name of controlled substance crime attempted]**;
- (2) **[Insert name of controlled substance crime attempted]** is a controlled substance crime; **(AND)**
- (3) The defendant intended to commit the controlled substance crime of **[Insert name of controlled substance crime attempted]**.

A person commits the crime of **[Insert name of controlled substance crime attempted]** if **[Insert instruction for that crime]**.

A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense, when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

What constitutes *commission of an overt act* towards the commission of the offense of **[Insert name of controlled substance crime attempted]** is for the jury to decide under the circumstances. It requires that the defendant do some act directed to the eventual carrying out of the crime. However, mere remote acts in preparation which are not reasonably in the chain of causation leading to the completion of the crime are insufficient.

To qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. It is, however, not necessary for the State to prove that the defendant would have actually succeeded if he/she had followed the course of conduct upon which he/she had started. [See *Skinner v. State*, 843 So. 2d 820, 825 (Ala. Crim. App. 2002)].

[Read if appropriate - Impossibility] – It is not a defense that under the circumstances it was factually or legally impossible to commit the crime if the offense could have been committed had the circumstances been as the defendant believed they were. [13A-4-2(b)]

[Read if appropriate - Renunciation] – A person is not guilty if, under circumstances manifesting a voluntary and complete renunciation of criminal intent, he/she avoided the commission of the attempted offense by abandoning his/her effort and, if mere abandonment is insufficient to accomplish the avoidance, by taking further and affirmative steps which prevented its commission. The burden of raising this issue is on the defendant, but this does not shift the burden of proof to the defendant. [13A-4-2(c)]

[Read if appropriate - Completion] – It is no defense to a prosecution for attempted **[Insert name of controlled substance crime attempted]** that the attempted offense was actually committed. [13A-4-5(a)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of the offense, then you shall find the defendant guilty of this offense.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense, then you cannot find the defendant guilty of this offense.

Use Notes

Attempt, criminal solicitation, and criminal conspiracy to commit a controlled substance crime are offenses included in any controlled substance crime that is charged, and a defendant charged with any controlled substance crime may be convicted of attempt, solicitation, or conspiracy to commit it. [13A-12-205]

A person may not be convicted on the basis of the same course of conduct of both the actual commission of an offense and an attempt to commit the offense. [13A-4-5(b)]

A verbal solicitation to commit a crime does not constitute an attempt to commit the crime; therefore, a defendant's request to buy a controlled substance is criminal solicitation and not an attempt. See *Thornton v. State*, 570 So. 2d 762 (Ala. Crim. App. 1990).

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