

CHAPTER G2

INCHOATE OFFENSES

- G2:01 CRIMINAL ATTEMPT
- G2:02 CONSPIRACY
- G2:03 CRIMINAL SOLICITATION
- G2(1-9) SPECIAL RULES

The instructions in this chapter are designed to cover the offenses in § 18-2-101 through -206; § 18-2-301, C.R.S.

NOTES ON CHAPTER USE

The Notes on Use following each instruction in this chapter identify the situations in which other instructions must be given to explain the inchoate offense charged. It is not necessary, however, to give the separate explanatory instruction(s) where the defendant is charged with the principal crime as well as with one or more of the inchoate offenses.

For a discussion of mental states required for attempt, complicity and conspiracy, see *Palmer v. People*, 964 P.2d 524 (Colo. 1998).

G2:01 CRIMINAL ATTEMPT

The elements of the crime of attempt to commit _____ are:
(Insert name of crime)

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. [the court should insert here the culpable mental state

required for the underlying offense]

4. [engaged in conduct constituting a substantial step toward the commission of _____ .

(Insert name of crime)

A substantial step is any conduct, whether act, omission or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense.]

5. [without the affirmative defense in instruction number _____.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal attempt to commit (insert name offense).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal attempt to commit (insert name of offense).

NOTES ON USE

Delete inapplicable bracketed material.

Where the defendant is charged with criminal attempt, an instruction explaining the elements and culpable mental states of the principal crime must be given.

For discussion of mens rea, see *People v. Thomas*, 729 P.2d 972 (Colo.1986); *Bogdanov v. People*, 941 P.2d 247 (Colo. 1997) amended, 955 P.2d 997 (Colo. 1997), *disapproved of on other grounds by Griego v. People*, 19 P.3d 1 (Colo. 2001); *People v. Beatty*, 80 P.3d 847 (Colo. App. 2003).

For discussion of substantial step, see: *People v. Lehnert*, 163 P.3d 1111 (Colo. 2007).

SOURCE & AUTHORITY

§18-2-101, C.R.S.

CLASSIFICATION OF OFFENSE

If attempt object is F1, then F2
If attempt object is F2, then F3
If attempt object is F3, then F4
If attempt object is F4, then F5
If attempt object is F5, then F6
If attempt object is F6, then F6
If attempt object is M1, then M2

G2:02 CONSPIRACY

The elements of the crime of conspiracy are:

1. That the defendant.
2. in the State of Colorado, at or about the date and place charged,
3. with the intent to promote or facilitate the commission of the crime of (insert principal crime)
4. [agreed with another person or persons that they, or one or more of them, would engage in conduct which constitutes (insert name of principal crime) or an attempt to commit (insert name of principal crime), and]

-or-

[agreed to aid another person or persons in the planning or commission of (insert principal crime), and]

5. the defendant, or a person with whom the defendant conspired, has performed an overt act in pursuance of such conspiracy.

6. [without the affirmative defense in instruction number

_____.

"Overt Act" means any act knowingly committed by one of the conspirators, in an effort to accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nature if committed separately and apart from the conspiracy. It must, however, be an act that tends to

accomplish the plan or scheme, and must be knowingly done in furtherance of some object or purpose of the conspiracy charged in the information [indictment].

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of conspiracy.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of conspiracy.

NOTES ON USE

Delete inapplicable bracketed material.

Where the defendant is charged with conspiracy, an instruction explaining the elements and definitions of the principal crime must be given.

If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are part of a single criminal episode.

SOURCE & AUTHORITY

§18-2-201,-206, C.R.S.

CLASSIFICATION OF OFFENSE

F6, for any felony
M3, for any misdemeanor

G2:03 CRIMINAL SOLICITATION

The elements of the crime of criminal solicitation are:

1. That the defendant,
2. in the State of Colorado, at or about the date and

place
charged,

3. with intent to promote or facilitate the commission
of

_____,
(insert felony)

4. under circumstances strongly corroborative of that
intent,

5. [commanded, induced, entreated, or otherwise
attempted
to persuade another person,]

-or-

[offered his/her services or another's services to
a
third party,]

6. to commit _____ ,
(insert felony)

7. [without the affirmative defense in instruction
number
_____.]

After considering all the evidence, if you decide the
prosecution has proven each of the elements beyond a
reasonable doubt, you should find the defendant guilty of
criminal solicitation.

After considering all the evidence, if you decide the
prosecution has failed to prove any one or more of the
elements beyond a reasonable doubt, you should find the
defendant not guilty of criminal solicitation.

NOTES ON USE

When the prosecution relies on a complicity theory,
the instruction defining complicity must be given.

Where the defendant is charged with solicitation, an instruction explaining the elements of and definitions for the principal crime must be given.

Melina v. People, 161 P.3d 633(Colo. 2007)(discussing statutory requirements and when unanimity instruction required)

SOURCE & AUTHORITY

§18-2-301 (1),(5), C.R.S.

SPECIAL RULES

G2(1) CONSPIRACY—MULTIPLE CONSPIRATORS

If the defendant knows that one with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty with such other person or persons whether or not he knows their identity. [§18-2-201(3), C.R.S.]

G2(2) CONSPIRACY—NO DEFENSE

It is no defense to a charge of conspiracy that the defendant or the person with whom he conspires does not occupy a particular position or have a particular characteristic which is an element of the crime, so long as the defendant believes that one of them does. [§18-2-205, C.R.S.]

G2(3) CONSPIRACY—NO DEFENSE

It is no defense to a charge of conspiracy that the person with whom the defendant conspires [is not legally responsible] [has immunity to prosecution or conviction] for the commission of the crime. [§18-2-205, C.R.S.]

G2(4) CRIMINAL ATTEMPT—COMPLICITY NO DEFENSE

A person who engages in conduct intending to aid another to commit an offense, commits criminal attempt if his conduct would establish him as a principal were the

offense committed by the other person, even if the other person is not guilty of committing or attempting the offense. [§18-2-101(2), C.R.S.]

G2(5) CRIMINAL ATTEMPT—NO DEFENSE

Factual or legal impossibility of committing criminal attempt is not a defense if the offense could have been committed had the attendant circumstances been as the defendant believed them to be. [§18-2-101(1), C.R.S.]

G2(6) CRIMINAL ATTEMPT—NO DEFENSE

It is no defense to the charge of criminal attempt that the crime attempted was actually completed by the defendant. [§18-2-101(1), C.R.S.]

G2(7) CRIMINAL SOLICITATION—NO DEFENSE

It is no defense to the charge of criminal solicitation that the person solicited could not be guilty of the offense because of lack of culpability or legal responsibility, or other incapacity. [§18-2-301(3), C.R.S.]

G2(8) REUNIFICATION AND ABANDONMENT—NON-AVAILABILITY

Renunciation and abandonment are not voluntary and complete so as to be a defense to a charge of [criminal attempt] [conspiracy] [criminal solicitation] if they are motivated in whole or in part by a belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or another, or which makes more difficult the consummation of the crime. [§18-2-401(1)(a), C.R.S.]

**G2(9) REUNIFICATION AND ABANDONMENT-NON-
AVAILABILITY**

Renunciation and abandonment are not voluntary and complete so as to be a defense to a charge of [criminal attempt] [conspiracy] [criminal solicitation] if they are motivated in whole or in part by a decision to postpone the crime until another time or to substitute another victim or another but similar objective. [§18-2-401(1)(b), C.R.S.]