

CHAPTER FOUR
INCHOATE OFFENSES

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INSTRUCTION NO. [4-101]

[Solicitation]

A person commits the offense of solicitation when, with the purpose that the offense of _____ be committed, the person [**commands**] [**encourages**] or [**facilitates**] another to commit the crime of _____.

It makes no difference whether the crime of _____ was actually committed.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 4-101(2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Solicitation, No. 4-101, 2009, Source and Comment]

SOURCE: MCA § 45-4-101 (2007); *State v. Ray*, 267 Mont. 128, 882 P.2d 1013 (1994).

COMMENT: In the blanks insert the offense that is the alleged subject of the solicitation. Further instructions will be needed defining the offense which is the subject of the alleged solicitation.

INSTRUCTION NO. [4-101(a)]

[Issues in Solicitation]

To convict the Defendant of solicitation, the State must prove the following elements:

1. That the Defendant commanded, encouraged or facilitated _____ in the commission of _____;

AND

2. That the Defendant did so with the purpose that the crime of _____ be committed, whether or not it was actually committed.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 4-101(a)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Issues in Solicitation, No. 4-101(a), 2009, Source and Comment]

SOURCE: MCA § 45-4-101 (2007); *State v. Ray*, 267 Mont. 128, 882 P.2d 1013 (1994).

COMMENT: Blanks should be filled in with the name of the person solicited and the crime solicited.

INSTRUCTION NO. [4-102]

[Conspiracy]

A person commits the offense of conspiracy when, with the purpose that the offense of _____ be committed, the person agrees with **[another]** **[others]** to the commission of the offense of _____, and an act in furtherance of the agreement is performed by any party to the agreement.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 4-102 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Conspiracy, No. 4-102, 2009, Source and Comment]

SOURCE: MCA § 45-4-102 (2007); *State v. Williams*, 185 Mont. 140, 604 P.2d 1224 (1979).

COMMENT: *See* MCA § 45-4-102(2) (2007), for situations not recognized as defenses to conspiracy. Further instructions will be needed to define the offense that is the alleged subject of the conspiracy.

See also State v. Black, 319 Mont. 154, 82 P.3d 926 (2003), relating to the sufficiency of independent corroborating evidence of an accomplice in a conspiracy situation.

INSTRUCTION NO. [4-102(a)]

[Issues in Conspiracy]

To convict the Defendant of conspiracy, the State must prove the following elements:

1. That the Defendant agreed with _____
to the commission of the offense of _____;

AND

2. That the Defendant did so with the purpose that the offense of _____
_____ be committed;

AND

3. That an act in furtherance of the agreement was performed by any party to the agreement.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 4-102(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Issues in Conspiracy, No. 4-102(a), 2009, Source and Comment]

SOURCE: MCA § 45-4-102 (2007).

COMMENT: Blanks should be filled in with the name of the person or persons with whom the defendant is charged with conspiring and the name of the offense which is the subject of the alleged conspiracy.

INSTRUCTION NO. [4-102(b)]

[Conspiracy – Responsibility for Acts of Co-Conspirators]

Each party to a conspiracy is responsible for all acts performed by his co-conspirators in furtherance of the conspiracy. **[One who knowingly joins an existing conspiracy has the same responsibility as the original parties to the conspiracy.]**

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 4-102(b) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

**[Conspiracy – Responsibility for Acts of Co-Conspirators, No. 4-102(b), 2009,
Source]**

SOURCE: MCA § 45-2-302(3) (2007); *State v. Williams*, 185 Mont. 140, 604 P.2d 1224 (1979).

INSTRUCTION NO [4-103]

[Attempt]

A person commits the offense of attempt when, with the purpose to commit the offense of _____, the person commits any act toward the commission of the offense of _____.

[The fact that the offense of _____ was or was not completed does not prevent conviction for the offense of attempt.]

GIVEN: _____

SOURCE: MCJI 4-103 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Attempt, 2009, Source and Comments]

SOURCE: MCA § 45-4-103 (2005); *State v. Ribera*, 183 Mont. 1, 597 P.2d 1164 (1979); *State v. Mahoney*, 264 Mont. 89, 870 P.2d 65.

COMMENT: In *Mahoney*, the Court quotes with approval the following language from *Ribera* at 870 P. 2d 70:

“This Court has stated that an overt act 'must reach far enough towards the accomplishment of the desired result to amount to the commencement of the consummation.' In addition, the Court stated that 'there must be at least some appreciable fragment of the crime committed, and it must be in such progress that it will be consummated unless interrupted by circumstances independent of the will of the attempter.'”

INSTRUCTION NO. [4-103(a)]

[Issues in Attempt]

To convict the Defendant of the offense of attempt, the State must prove the following elements:

1. That the Defendant performed an act toward the commission of the offense of _____;

AND

2. That the Defendant did so with the purpose to commit the offense of _____.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 4-103(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Issues in Attempt, No. 4-103(a), 2009, Source and Comment]

SOURCE: MCA § 45-4-103 (2007).

COMMENT: Insert the name of the offense in appropriate blanks.

INSTRUCTION NO. [4-103(b)]

[Attempt – Impossibility of Committing Offense Attempted--No Defense]

It is not a defense to a charge of attempt that, because of a misapprehension of the circumstances, it would have been impossible for the accused to commit the offense attempted.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 4-103(b) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Attempt – Impossibility of Committing Offense Attempted – No Defense, No. 4-103(b), 2009, Source]

SOURCE: MCA § 45-4-103(2) (2007).

INSTRUCTION NO. [4-103(c)]

[Attempt – Defense of Abandonment of Criminal Purpose]

It is a defense to a charge of attempt that under circumstances manifesting a voluntary and complete renunciation of criminal purpose, a person avoided commission of the offense attempted by abandoning the person's criminal effort.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 4-103(C) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

**[Attempt – Defense of Abandonment of Criminal Purpose, No. 4-103(c), 2009,
Source]**

SOURCE: MCA § 45-4-103(4) (2007).