**8.191 TRANSPORTATION OR ATTEMPTED TRANSPORTATION**   
**FOR PROSTITUTION OR SEXUAL ACTIVITY** **(18 U.S.C. § 2421)**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [transporting] [attempting to transport] a person with intent that the person engage in [prostitution][sexual activity] in violation of Section 2421 of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly [transported] [attempted to transport] a person in [interstate] [foreign] commerce; [and]

Second, the defendant [transported] [attempted to transport] a person with the intent that such person engage in [prostitution] [*describe proposed sexual activity*][.] [;] [; and]

[Third, that [if the sexual activity had occurred] [based upon the sexual activity that occurred], the defendant could have been charged with a criminal offense under the laws of [the United States] [*insert the state or territory*]. [In [*state or territory*], it is a criminal offense to [*describe proposed sexual activity*]]

[Third/Fourth, the defendant did something that was a substantial step toward committing the crime and that strongly corroborated the defendant’s intent to commit the crime.

Mere preparation is not a substantial step toward committing the crime. To constitute a substantial step, a defendant’s act or actions must unequivocally demonstrate that the crime will take place unless interrupted by independent circumstances.

Jurors do not need to agree unanimously as to which particular act or actions constituted a substantial step toward the commission of a crime.]

**Comment**

The bracketed language setting forth the first option for the third element is to be used when the defendant is charged with persuading or coercing a minor to engage in “any sexual activity for which any person can be charged with a criminal offense.” Further, “[w]here a federal prosecution hinges on an interpretation or application of state law, it is the district court’s function to explain the relevant state law to the jury.” *United States v. Lopez*, 4 F.4th 706 (9th Cir. 2021) (quoting United States v. Davila-Nieves, 670 F.3d 1, 8 (1st Cir. 2012)). While the panel in *Lopez* considered a conviction under 18 U.S.C. § 2422(b), their findings with respect to the jury instructions are also applicable here. In *Lopez*, the evidence against the defendant implicated a sexual conduct offense in Guam. 4 F.4th 706*.* The panel found that while the district court was not required to instruct the jury on the elements of the particular predicate offense as if they were elements of the offense charged, the district court nonetheless erred in failing to instruct the jury on the applicable criminal laws of Guam against which the defendant’s proposed sexual conduct was to be evaluated. *Id.*

The bracketed language stating an additional element applies only when the charge is an attempt. In attempt cases, "[t]o constitute a substantial step, a defendant’s actions must cross the line between preparation and attempt by unequivocally demonstrating that the crime will take place unless interrupted by independent circumstances." United States v. Goetzke, 494 F.3d 1231, 1237 (9th Cir. 2007) (internal quotations omitted).

The “strongly corroborated” language in this instruction is taken from United States v. Snell, 627 F.2d 186, 187 (9th Cir. 1980) ("A conviction for attempt requires proof of culpable intent and conduct constituting a substantial step toward commission of the crime that strongly corroborates that intent") and United States v. Darby, 857 F.2d 623, 625 (9th Cir. 1988) (same).

Jurors do not need to agree unanimously as to which particular act or actions constituted a substantial step toward the commission of a crime. United States v. Hofus, 598 F.3d 1171, 1176 (9th Cir. 2010).

"[A] person may be convicted of an attempt to commit a crime even though that person may have actually completed the crime." United States v. Rivera-Relle, 333 F.3d 914, 921 (9th Cir. 2003).

*Approved 9/2021*