**20.10 Attempted Sexual Abuse—Incapacity of Victim**

**(18 U.S.C. § 2242(2))**

## The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with attempted sexual abuse in violation of Section 2242(2) 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 intended to engage in a sexual act with a person who was [incapable of appraising the nature of the conduct] [physically incapable of declining participation in or communicating unwillingness to engage in that, sexual act];

Second, the defendant did something that was a substantial step toward committing the crime of sexual abuse; and

Third, the offense was committed at [*specify place of federal jurisdiction*].

A “substantial step” is conduct that strongly corroborated the defendant’s intent to commit 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. Mere preparation is not a substantial step toward committing the crime.

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

In this case, “sexual act” means [*specify statutory definition*].

**Comment**

*See* Comment to Instruction 20.1 (Aggravated Sexual Abuse (18 U.S.C. § 2241(a))).

“To 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) (per curiam) (quoting *United States v. Nelson*, 66 F.3d 1036, 1042 (9th Cir. 1995)).

The “strongly corroborated” language in this instruction comes from *United States v. Snell*, 627 F.2d 186, 187 (9th Cir. 1980) (per curiam) (“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).

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