**20.4 Attempted Aggravated Sexual Abuse—Administration of Drug,**

**Intoxicant, or Other Substance (18 U.S.C. § 2241(b)(2))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with attempted aggravated sexual abuse in violation of Section 2241(b)(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 [*name of victim*] after substantially impairing [*name of victim*]’s ability to judge or control conduct by administering a drug, intoxicant, or other similar substance either by force or threat of force or without the knowledge or permission of [*name of victim*];

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

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

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

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.

**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, 1176-77 (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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