

**INCHOATE CRIMES**

Reviewed Jan. 17, 2002  
Approved 6/17/03

**DRAFT**  
RSA 629:1 Attempt

The defendant is charged with the crime of attempted [insert substantive offense.] The definition of this offense has \_\_\_\_ parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant had the purpose to commit the offense of [substantive offense]; and
2. The defendant took a substantial step toward the commission of the crime.

[Renunciation is an affirmative defense to the crime of attempt. The defendant bears the burden of proving renunciation by a preponderance of the evidence. To establish this defense, the defendant must prove that it is more likely than not that s/he voluntarily renounced his/her criminal purpose by abandoning his/her effort to commit the crime of [substantive offense] or by otherwise preventing the commission of the crime under circumstances that manifest the defendant’s complete withdrawal of his/her criminal purpose.

A renunciation is not “voluntary” if it is substantially motivated by circumstances the defendant was not at first aware of which increase the probability of his/her detection or which make more difficult the commission of the crime. Renunciation is not complete if the purpose is to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.]

These are the elements of the crime of attempt. Certain words need to be defined:

“Substantial step” means conduct that is strongly corroborative of the defendants purpose to commit the offense of [substantive offense.] Such conduct may consist of either an act or an omission to act. The defendant’s conduct must be more than mere preparation to commit the crime.

You should consider whether under the circumstances as the defendant believed them to be, the defendant’s act or omission to act constituted a substantial step towards the commission of the crime.

The crime of [substantive offense] is defined as follows:<sup>1</sup>

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<sup>1</sup> The intended offense should be defined as appropriate to the case. See State v Johnson, 144 N.H. 175 (1999); State v Hutchinson, 137 N.H. 591 (1993)

Reviewed Jan. 16, 2003  
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**RSA 629:2 Criminal Solicitation**

The defendant is charged with the crime of criminal solicitation. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant commanded, solicited or requested that [another person] engaged in conduct which would constitute the crime of [substantive offense]; and
2. The defendant made such command, solicitation or request with the purpose that the crime of [substantive offense] be committed by the other person.

The State is not required to prove that the person solicited actually would have committed the crime. Nor is it a defense that the person solicited would be immune from liability for engaging in the criminal conduct by virtue or irresponsibility, incapacity or exemption.

[Renunciation is an affirmative defense to criminal solicitation. The defendant bears the burden of proving renunciation by a preponderance of the evidence. To establish this defense, the defendant must prove that it is more probable than not that s/he renounced his/her criminal purpose by persuading the other person not to commit [substantive offense] or by otherwise preventing the commission of the [substantive offense] under circumstances which manifest the defendant's purpose that the crime not occur.]

Those are the elements of the crime of criminal solicitation. Certain words need to be defined:

The crime of [substantive offense] is defined as follows:<sup>1</sup>

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<sup>1</sup> The intended offense should be defined as appropriate to the case. See State v Johnson, 144 N.H. 175 (1999); State v Hutchinson, 137 N.H. 591 (1993)

Submitted 3/17/06  
Discussed and approved 6/16/06

# DRAFT

RSA 629:3 Conspiracy

The defendant is charged with the crime of conspiracy to [state crime as alleged in the indictment.] The definition of this offense has four parts or elements. The state must prove each element beyond a reasonable double. Therefore, the state must prove that:

1. The defendant agreed with another person to commit or cause the commission of [state crime as alleged in the indictment];
2. The defendant entered into this agreement;
3. During the existence of the conspiracy, one of its members committed an overt act alleged in the indictment;
4. This overt act was committed in furtherance of the conspiracy.

Certain words in the definition need to be further defined:

“Agreement” – The essence of the crime of conspiracy is an agreement by two or more people to commit a crime. Under the law, such an agreement is itself a criminal offense, provided that one of the conspirators commits at least one overt act in furtherance of the agreement. The State does not have to prove that there was an explicit oral or written understanding between the conspirators; it may be an unspoken or non-verbal mutual understanding between the conspirators to cooperate in the commission of the crime. The State does not have to prove that all the people who were members of the conspiracy knew about or agreed to all of the details of the conspiracy or that each member of the conspiracy knew the identity of or the role played by every other member of the conspiracy. However, it is not enough that the people simply met, discussed matters of common interest or acted in similar ways. You must find that the defendant was a part of a joint plan to commit the crime of [state crime as alleged in the indictment.]

Since direct evidence of a conspiracy is often difficult to obtain, the existence of a conspiracy frequently must be proved by circumstantial evidence. The very essence of the crime is secrecy and concealment. Accordingly, in deciding whether the defendant entered into an agreement to bring about the crime of [state crime as alleged in the indictment] you may consider all the facts and circumstances in evidence including inferences drawn from the course of conduct of the conspirators. A defendant who joins an existing conspiracy adopts the prior acts of the other conspirators. You may consider the coconspirators earlier acts and statements made in furtherance of the conspiracy as evidence against the defendant.<sup>1</sup>

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<sup>1</sup> The NH Supreme Court has not considered the scope of conspiratorial liability however the US Supreme Court has adopted the definition set forth above. See Pinkerton v US 328 US 640 1946

While the defendant must have joined the conspiracy with the specific intent to commit the crime of [state crime as alleged in the indictment] to be found guilty, the State need not prove that such objective was in fact accomplished.

“Overt act” – In order to sustain its burden of proof, the State must prove beyond a reasonable doubt that during the existence of the conspiracy one of the members performed at least one of the overt acts alleged in the indictment. The overt act need not in itself be a criminal act. It may be a transaction or event that is entirely innocent when considered alone and provided that it was committed in an effort to accomplish the object of the conspiracy and during the existence of the conspiracy.

In this case the State has alleged [ ] overt acts in the indictment against the defendant. [ read the overt acts]

The State needs to prove only one of the overt acts in order to prove the defendant guilty of conspiracy to commit [state crime as alleged in the indictment.]<sup>11</sup> The State need not prove that the defendant personally committed or knew of the overt act. Once you have decided that the defendant was a member of the conspiracy, the defendant is responsible for what other conspirators did to carry out the object of the conspiracy, whether or not the defendant knew what they did.

The defendant is charged with conspiracy to commit the crime of [ ].

The definition of the crime of [ ] is [read definition of crime alleged.]

“Purposely” – see definition of purposely.

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<sup>11</sup> The NH Supreme Court has not decided whether there must be jury unanimity as to which overt act was committed. See *State v Gonzales* 143 NH 693, 703-04 1999

HOMICIDE

Revised 1/16/04  
Approved 1/16/04

**DRAFT**  
RSA 630:1, I(a) Capital Murder

The defendant is charged with the crime of capital murder. The definition of this crime has 3 parts, or elements. The state must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of a (law enforcement) (judicial) officer; and
2. When his/her death was caused, the (law enforcement) (judicial) officer was acting in the line of duty;

OR

1. The defendant caused the death in retaliation for the (law enforcement) (judicial) officer's actions in the line of duty; and
2. The defendant acted knowingly.

These are the elements of Capital Murder. Certain words in the definition need to be further defined:

A "law enforcement officer" is a police officer, sheriff or deputy sheriff, an official or employee of any prison, jail or corrections institution, a probation/parole officer or conservation officer.

A "judicial officer" is a judge, a prosecuting attorney employed by a county or municipality, or an attorney employed by the department of justice.

"Knowingly" means .[see definition of knowingly].

**RSA 630:1, I(b) (e) (f) Capital Murder**

The defendant is charged with the crime of capital murder. The definition of this crime has three parts, or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

**DRAFT**

- 1.The defendant caused the death of another; and
- 2.The defendant caused the death before, after, or while engaged in committing or attempting to commit the crime of [kidnapping][aggravated felonious sexual assault][a violation of RSA 318-B:26, I(a) or (b)]; and
- 3.The defendant acted knowingly.

These are the elements of capital murder. You must also find that the defendant committed the crime of. [kidnapping][aggravated felonious sexual assault][a violation of RSA 318-B:26, I(a) or (b)]. The elements of these crimes are listed in their corresponding instructions. Certain other words in the definition need to be further defined:

“Knowingly” means[see definition of knowingly].

Submitted by 1/16/04  
Revised & Approved: 1/16/04

**DRAFT**  
**RSA 630:1(d) Capital Murder**

The defendant is charged with the crime of capital murder. The definition of this crime has three parts, or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another; and
2. The defendant did so after having been sentenced to life without parole for the crime of first degree murder; and
3. The defendant acted knowingly.

These are the elements of the crime of capital murder. Certain words in this definition need to be further defined.

“Knowingly” means [see definition of knowingly].

Reviewed and Approved 3/18/2005

**RSA 630:1-a, I(a), II First degree murder**

DRAFT

The defendant is charged with the crime of First Degree Murder. The definition of this crime has 3 parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another; and<sup>1</sup>
2. The defendant did so purposely.
3. The defendant's act or acts in furtherance of his/her purpose were premeditated and deliberate.

These are the elements of First Degree Murder. Certain words in the definition need to be further defined:

For purposes of the crime of First Degree Murder, to act "purposely" means that the defendant acted with the conscious object of bringing about the death of [insert name of victim]. It is not sufficient to find that the defendant knew his/her actions would cause death; the defendant must have wanted, or specifically intended, to cause death.

To act with premeditation and deliberation means that there must not be only an intention to kill; there must also be a deliberate and premeditated design to kill. Such design must precede the killing by some space of time, but the time need not be long. It must be a sufficient time for some reflection and consideration upon the choice to kill or not to kill and for the formation of a definite purpose to kill. If the time is sufficient for this, it does not matter how brief it is. However, a killing that is done upon sudden impulse is not premeditated or deliberate.

Whether a deliberate and premeditated design to kill was formed by the defendant must be determined from all the circumstances of the case, including the character of weapon employed, the force and number of blows inflicted, the location and severity of the wounds, the place of the crime, any previous statements or conduct of the defendant indicating preparation or motive, any subsequent acts or statements of the defendant indicating his/her state of mind, and every other circumstance having a legitimate bearing upon the subject<sup>2</sup>

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<sup>1</sup> If appropriate, give causation instruction.

<sup>2</sup> State v. Greenleaf, 71 N.H. 696 (1902); State v. Sadvari, 123 N.H. 410 (1983); State v. Hamel, 123 N.H. 670 (1983); State v. Shackford, 127 N.H. 695 (1986); State v. Sullivan, 131 N.H. 209 (1988); State v. Herrick, 133 N.H. 694 (1990); State v. Patten, 148 N.H. 659 (2002).

Rev. & Approved 1/16/04

**DRAFT**  
**RSA 630:1-a, 1(b)(2) First Degree Murder**

The defendant is charged with crime of first degree murder. The definition of this crime has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

- 1.The defendant caused the death of another; and
- 2.The defendant did so before, after, while engaged in the commission of, or while attempting to commit the crime of [robbery] [burglary] while armed with a deadly weapon; and
- 3.The death was caused by the use of the deadly weapon; and
- 4.The defendant acted knowingly.

These are the elements of first degree murder. You must also find that the defendant committed or attempted to commit the crime of [robbery] [burglary] while armed with a deadly weapon. The elements of this crime are [ see definition of [robbery] [burglary]]. Certain words must be further defined:

A “deadly weapon” is [see definition].

“Knowingly” means [see definition of knowingly].

Submitted 1/16/04  
Rev. & Approved 1/16/04

**RSA 630:1-a.1(b)(3) First Degree Murder**

**DRAFT**

The defendant is charged with the crime of first degree murder. The definition of this crime has three parts, or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

- 1.The defendant caused the death of another; and
- 2.The defendant did so while committing or attempting to commit arson; and
- 3.The defendant acted knowingly.

These are the elements of first degree murder. You must also find that the defendant committed or attempted to commit the crime of arson. The elements of the crime of arson are {insert definition}. Certain words must be further defined:

“Knowingly” means [see definition of knowingly].

Submitted 1/16/04  
Rev. & Approved 1/16/04

**RSA 630:1-a, I (b) (4) First Degree Murder**

**DRAFT**

The defendant is charged with the crime of first degree murder. The definition of this crime has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1.The defendant caused the death of another; and

2.The person whose death the defendant caused was the [president of the United States] [vice-president of the United States][president-elect of the United States][vice-president-elect of the United States][governor of any State][governor-elect of any State][member of the congress of the United States][member-elect of the congress of the United States][candidate for president, vice-president, governor, or member of congress who had been nominated at his/her party's primary]; and

3.The defendant was motivated by his/her knowledge of the victim's position or status;  
and

4.The defendant acted knowingly.

These are the elements of first degree murder. Certain words need to be further defined:

“Knowingly” means [see definition of knowingly].

**RSA 630:1-b, 1 (a) Second Degree Murder (Knowingly)**

The defendant is charged with the crime of second degree murder. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another,<sup>1</sup> and
2. The defendant acted knowingly.

These are the elements of the crime of second degree murder. Certain words in the definition need to be defined:

“Knowingly” means [see definition of knowingly.]

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<sup>1</sup> Use causation instruction when appropriate.

Submitted: 3/21/97

**RSA 630:1-b,I(b) Second Degree Murder (Recklessly W/Extreme Indifference)**

The defendant is charged with the crime of second degree murder. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another,<sup>1</sup> and
2. The defendant acted recklessly under circumstances showing an extreme indifference to the value of human life.

These are the elements of the crime of second degree murder. Certain words in the definition need to be defined:

“Recklessly” means [see definition of recklessly.]

For a killing to be second degree murder, the defendant must not simply act recklessly, but rather must act recklessly under circumstances showing an extreme indifference to the value of human life. This means something more than merely being aware of and consciously disregarding a substantial and unjustifiable risk of death. The risk involved and the disregard must be so blatant as to manifest extreme indifference to the value of human life.<sup>2</sup> [You may presume the recklessness and extreme indifference required for the crime of second degree murder under this definition if you find that the defendant used a deadly weapon while committing or attempting to commit [or in immediate flight after committing or attempting to commit] [insert alleged class A felony and incorporate instruction]].

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<sup>1</sup> Use causation instruction when appropriate.

<sup>2</sup> *State v Schultz*, 141 N.H.101,105(1996); *State v Dufield*, 131 N.H.35 (1988); *State v Howland*, 119 N.H. 413, (1979)

**RSA 630:2, I(b) Manslaughter (Provocation)<sup>1</sup>**

**DRAFT**

The defendant is charged with the crime of manslaughter. The definition of this crime has two parts, or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another; and
2. The defendant acted under the influence of extreme mental or emotional disturbance caused by extreme provocation; and
3. The way in which the defendant caused the death would otherwise constitute murder.

Certain words in this definition need to be further defined:

In deciding whether the defendant acted under the influence of extreme mental or emotional disturbance caused by extreme provocation you must find that the provocation was sufficient to cause a reasonable person to kill another out of passion. To constitute sufficient provocation under the law, you must find that the acts of the victim were unlawful; lawful acts, even if they involve physical violence, are not recognized in the law as sufficient provocation to kill another.<sup>2</sup>

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<sup>1</sup> This instruction will normally be given in a case where the defendant is charged with murder, and the facts give rise to a possibility that the charge may be mitigated to provocation manslaughter. Although the jury should deliberate on the murder charge first, provocation manslaughter is not a lesser-included offense of murder and should not be treated as such. State v. Taylor, 141 N.H.89 (1996); cf. State v. Schultz, 141 N.H. 101 (1996).

<sup>2</sup> State v. Smith, 123 N.H. 46 (1983); State v. Little, 123 N.H. 33 (1983).

Reviewed and approved 7/03

**RSA 630:3 Negligent Homicide (General)**

DRAFT

The defendant is charged with the crime of negligent homicide. The definition of this crime has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another person; and
2. The defendant acted negligently.

These are the elements of the crime of negligent homicide. Certain words need to be defined further:

“To cause the death of another” means that the death of another person was the direct result of the defendant’s actions.<sup>1</sup>

“Negligently” means [see definition of negligently.]

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<sup>1</sup> Where intervening cause may be an issue, see causation instruction.

Reviewed and approved 7/03

**RSA 630:3 Negligent Homicide (DWI)**

DRAFT

The defendant is charged with the crime of negligent homicide. The definition of this crime has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another person; and
2. The death of the victim resulted from the defendant's operation of a [propelled vehicle][boat] while under the influence of intoxicating liquor or a controlled drug or any combination thereof<sup>1</sup>.

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<sup>1</sup> See *State v. Wong*, 125 N.H. 610 (1984) (Recognizing legislative determination that operating under the influence is negligent per se.

Reviewed and approved 7/18/03

# DRAFT

## RSA 630:4 Causing or Aiding Suicide

The defendant is charged with the crime of causing or aiding suicide. The definition of this crime has [two][three] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

- .1. The defendant [aided another in committing][solicited another to commit] suicide; and
- [2. The defendant's conduct caused the [attempted] suicide; and ]<sup>1</sup>
3. The defendant acted purposely.

These are the elements of the crime of causing or aiding suicide. Certain words in the definition need to be further defined:

“Purposely” means [see definition of purposely.]

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<sup>1</sup> Insert when felony causing or aiding suicide is charged.