

## 8.3: Solicitation

### Learning Objectives

1. Explain why solicitation is an inchoate crime.
2. Define the criminal act element required for solicitation.
3. Define the criminal intent element required for solicitation.
4. Determine whether the defense of renunciation is available for solicitation.
5. Discuss various approaches to solicitation grading.

**Solicitation** can be a precursor to conspiracy because it criminalizes the *instigation* of an agreement to commit a criminal offense. Solicitation is an inchoate crime because it is possible that the conspiracy will *never be formed*, and the crime that is its object will *not be committed*. Many of the rules that apply to attempt and conspiracy also apply to solicitation, as is discussed in [Section 8.3](#).

### 8.3.1 Solicitation Act

The **criminal act** element required for solicitation is generally **words** that *induce* another to commit a capital felony, first-degree felony, Tex. Penal Code § 15.03, accessed January 6, 2011, [law.onecle.com/texas/penal/15.03.00.html](http://law.onecle.com/texas/penal/15.03.00.html) (accessed January 6, 2011). or any crime. N. Y. Penal Law § 100.00, accessed January 6, 2011, [http://law.onecle.com/new-york/penal/PEN0100.00\\_100.00.html](http://law.onecle.com/new-york/penal/PEN0100.00_100.00.html). Typical words of inducement are request, command, encourage, hire, procure, entice, and advise. The Model Penal Code defines solicitation as follows: “[a] person is guilty of solicitation to commit a crime if with the purpose of promoting or facilitating its commission he commands, encourages or requests another person to engage in specific conduct which would constitute such crime” (Model Penal Code § 5.02(1)). However, the Model Penal Code does not require direct *communication*, if “conduct was designed to effect such communication.” (Model Penal Code § 5.02(2)).

### 8.3.2 Example of Solicitation Act

Jimmy calls his friend Choo, who is reputed to be a “fence,” and asks Choo to help him sell some stolen designer shoes. If Jimmy is in a jurisdiction that criminalizes the “request” to commit *any crime*, Jimmy probably has committed the criminal act element required for solicitation. If Jimmy is in a jurisdiction that only criminalizes solicitation to commit a *capital felony* or *first-degree felony*, then Jimmy probably has not committed the criminal act element required for solicitation because selling stolen property is not generally graded that severely. If Jimmy is in a jurisdiction that follows the Model Penal Code, and Jimmy and Choo had a long-standing arrangement whereby Jimmy puts stolen items in a storage facility so that Choo can sell them, Jimmy will not have to communicate his request to Choo. He simply will have to place the shoes in the storage facility to commit the criminal act element required for solicitation.

### 8.3.3 Solicitation Intent

The criminal intent element required for solicitation is **specific intent** or **purposely** to promote the crime’s commission in most jurisdictions and under the Model Penal Code, as set forth in [Section 8.3.1 “Solicitation Act”](#). Or. Rev. Stat. § 161.435, accessed January 6, 2011, <http://law.onecle.com/oregon/161-general-provisions/161.435.html>.

### 8.3.4 Example of Solicitation Intent

Review the solicitation act example in [Section 8](#). In this example, Jimmy *desires* Choo to commit the crime of selling stolen property so that he can reap a benefit from his stolen designer shoes. Thus Jimmy probably has the criminal intent required for solicitation. If Jimmy is in a jurisdiction that criminalizes solicitation to commit any crime, Jimmy could be charged with and convicted of this offense.

### 8.3.5 Renunciation as a Defense to Solicitation

Similar to conspiracy, many jurisdictions allow **renunciation** as an **affirmative defense** to solicitation. Ariz. Rev. Stat. § 13-1005, accessed January 7, 2011, [www.azleg.gov/FormatDocument.asp?inDoc=/ars/13/01005.htm&Title=13&DocType=ARS](http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/13/01005.htm&Title=13&DocType=ARS). The renunciation must be *voluntary* and *complete* and must *thwart* the crime that is solicited. As the Model Penal Code states, “it is an affirmative defense that the actor, after soliciting another person to commit a crime, persuaded him not to do so or otherwise

prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose” (Model Penal Code § 5.02(3)).

### 8.3.6 Solicitation Grading

Jurisdictions vary as to how they **grade** solicitation. Some jurisdictions grade solicitation according to the crime solicited, with more serious crimes accorded a more severe solicitation punishment. Ala. Code § 13A-4-1(f), accessed January 7, 2011, [law.onecle.com/alabama/criminal-code/13A-4-1.html](http://law.onecle.com/alabama/criminal-code/13A-4-1.html). Others grade solicitation the same as the crime solicited, with exceptions. N.H. Rev. Stat. Ann. § 629:2(IV), accessed January 7, 2011, <http://law.justia.com/codes/new-hampshire/2009/TITLELXII/CHAPTER629/629-2.html>. Some states grade solicitation as a misdemeanor, *regardless* of the crime solicited. *Commonwealth v. Barsell*, 424 Mass. 737 (1997), accessed January 7, 2011, [http://scholar.google.com/scholar\\_case?case=8677391463974362410&hl=en&as\\_sdt=2&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=8677391463974362410&hl=en&as_sdt=2&as_vis=1&oi=scholar) (accessed January 7, 2011).

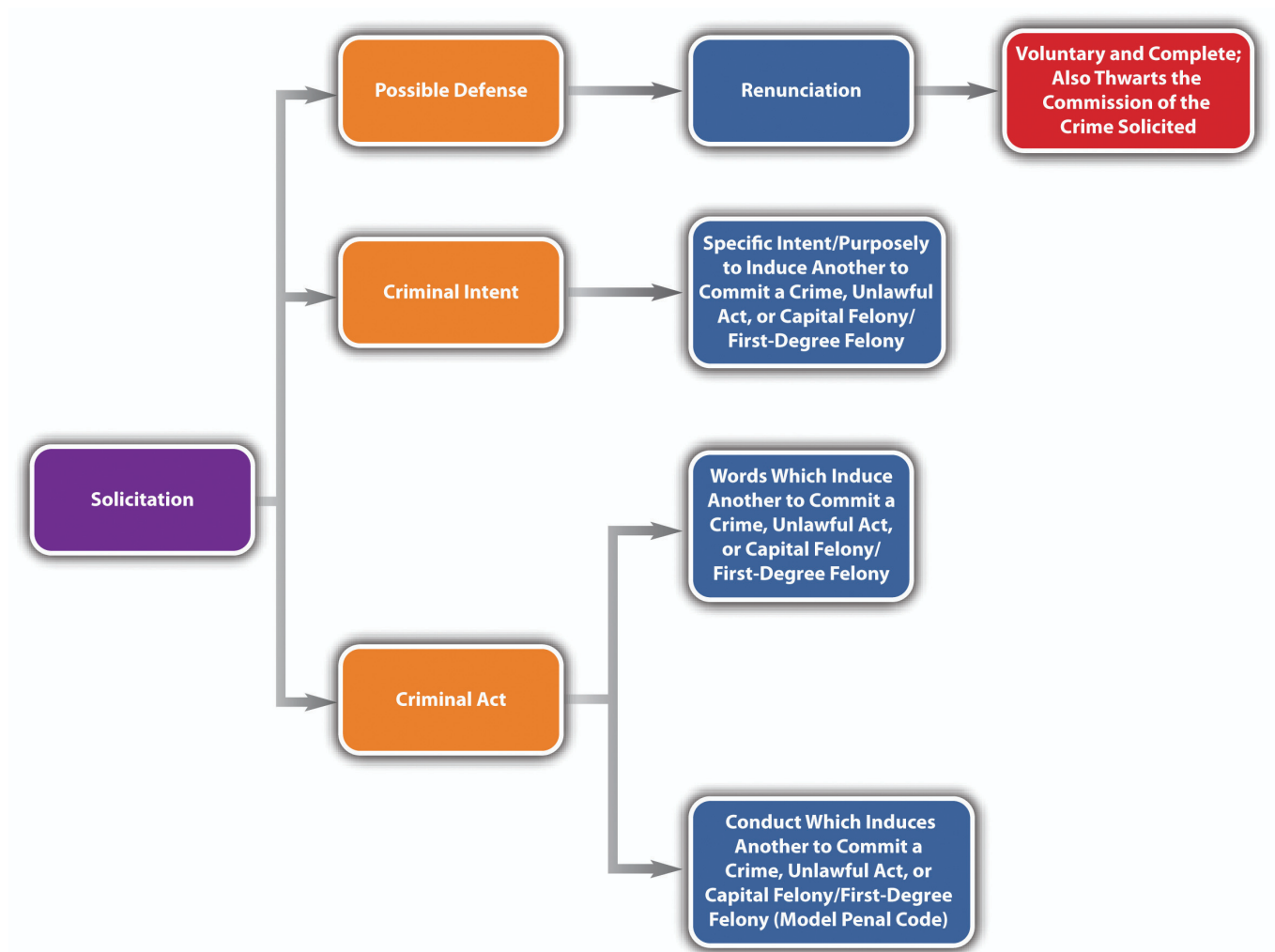


Figure 8.8 Diagram of Solicitation

### 8.3.7 Exercises

- Solicitation is an inchoate crime because the crime that is solicited may not be completed.
- The criminal act element required for solicitation is words or conduct that induces another to commit any crime, a capital felony, or first-degree felony.
- The criminal intent element required for solicitation is specific intent or purposely to induce another to commit any crime, a capital felony, or first-degree felony.
- Renunciation is an affirmative defense to solicitation if the defendant voluntarily and completely renounces his or her criminal purpose and thwarts the commission of the solicited crime.

- Jurisdictions vary in their approach to grading solicitation. Some jurisdictions grade solicitation on a sliding scale according to the crime solicited, some grade solicitation the same as the crime solicited, and some grade solicitation as a misdemeanor, regardless of the crime solicited.

### 8.3.8 Exercises

Answer the following questions. Check your answers using the answer key at the end of the chapter.

1. Nancy asks Jennifer to help her counterfeit twenty-dollar bills. Jennifer refuses. Has a crime been committed in this situation?
2. Read *Planter v. State*, 9 S.W. 3d 156 (1999). In *Planter*, the defendant told a former police officer wearing a wire that he would kill his estranged son-in-law for ten thousand dollars. The defendant was convicted of solicitation to commit murder. The defendant appealed on the basis that he did not solicit the former police officer to commit murder; he solicited the former police officer to *pay him* to commit murder. Did the Court of Criminal Appeals of Texas uphold the defendant's conviction? The case is available at this link: <http://caselaw.findlaw.com/tx-court-of-criminal-appeals/1007515.html>.
3. Read *People v. Dennis*, 340 N.W.2d 81 (1983). In *Dennis*, the defendant was convicted of incitement to murder, which is the Michigan equivalent of solicitation to murder. The defendant appealed based on the fact that she solicited a police officer posing as a hit man, so the police officer did not have the intent to murder, and thus the murder was not possible. Did the Michigan Court of Appeals uphold the defendant's conviction? The case is available at this link: [http://scholar.google.com/scholar\\_case?case=4173359376569096786&hl=en&as\\_sdt=2002&as\\_vis=1](http://scholar.google.com/scholar_case?case=4173359376569096786&hl=en&as_sdt=2002&as_vis=1).

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