COERCION IN THE FIRST DEGREE
(Class D felony)
PENAL LAW 135.65(2)
(Committed on or after September 1, 1967)

The _____ count is Coercion in the First Degree.

Under our law, a person is guilty of coercion in the first degree when[1] he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he or she has a legal right to engage, and when he or she thereby compels or induces the victim to:

Select appropriate alternative(s):

Commit or attempt to commit a felony.

Cause or attempt to cause physical injury to a person.

Violate his or her duty as a public servant.

by means of instilling in him or her a fear that, if the demand is not complied with, the actor or another will:

Select appropriate alternative(s):

Cause physical injury to a person;

Cause damage to property;

Engage in [other] conduct constituting a crime;

Accuse some person of a crime or cause criminal charges to be instituted against him or her;

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[1] Penal Law §135.65 reads: "A person is guilty of coercion in the first degree when he commits the crime of coercion in the second degree ..." The charge substitutes the language of coercion in the second degree in the appropriate place. Insert footnote that charge incorporates 2d degree.

Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;

Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act;

Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;

Use or abuse his position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely;

Perform any [other] act which would not in itself materially benefit[2] the actor but which is calculated to harm another person materially with respect to his or her health, safety, business, calling, career, financial condition, reputation or personal relationships;

[*Select appropriate alternative(s):*

Under our law, *(specify)* is a felony. *If appropriate define the felony.*

The term, ["PHYSICAL INJURY"], ["PUBLIC SERVANT"] used in this definition has its own special meaning in our law. I will now give you the meaning of that term.

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[2] If necessary "benefit" may defined as follows*:* " 'Benefit' means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary." Penal Law § 10.00(17).

"PHYSICAL INJURY" means impairment of physical condition or substantial pain.[3]

"PUBLIC SERVANT" means any public officer or employee of the state or of any political subdivision thereof or of any governmental instrumentality within the state, or any person exercising the functions of any such public officer or employee. The term public servant includes a person who has been elected or designated to become a public servant.[4]]

[*NOTE*: *Add if applicable:*

It is no defense to a prosecution for coercion [or an attempt to commit coercion] that, by reason of the same conduct, the defendant also committed

Select appropriate crime:

bribe receiving by a labor official[5]

bribe receiving[6]].[7]

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name),

Select appropriate alternative(s):

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[3] Penal Law § 10.00(9); *See People v. Chiddick*, 8 NY3d 445 (2007).

[4] Penal Law § 10.00(15).

[5] The statute states "bribe receiving by a labor official as defined in section 180.20." However, that crime is defined in section 180.25.

[6] The statute states "bribe receiving as defined in section 200.05." However, that crime is defined in section 200.10.

[7] Penal Law § 135.70.

compelled or induced (*specify*) to engage in conduct which (*specify*) had a legal right to abstain from engaging in,

or

compelled or induced (*specify*) to abstain from engaging in conduct in which he/she had a legal right to engage;

2. That the defendant thereby compelled or induced (*specify*) to:

Select appropriate alternative(s):
Commit or attempt to commit a felony.
Cause or attempt to cause physical injury to a person.
Violate his or her duty as a public servant; and

3. That the defendant did so by means of instilling in (*specify*) a fear that, if the demand were not complied with, the actor or another would:

Select appropriate alternative(s):
Cause physical injury to a person;

Cause damage to property;

Engage in [other] conduct constituting a crime;

Accuse some person of a crime or cause criminal charges to be instituted against him/her;

Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;

Cause a strike, boycott or other collective labor group action injurious to some person's business when the act or omission compelled was not for the benefit of the group in whose interest the actor purported to act;

Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
Use or abuse his position as a public servant by performing some act within or related to his/her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely;

Perform any [other] act which would not in itself materially benefit the defendant but which is calculated to harm another person materially with respect to his/her health, safety, business, calling, career, financial condition, reputation or personal relationships; and

[*Note: If the affirmative defense does not apply, conclude as follows:*

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Coercion in the Second Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Coercion in the Second Degree as charged in the _____ count.

[NOTE: If the affirmative defense does apply, continue as follows:

If you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of Coercion in the First Degree as charged in the _____ count.

On the other hand, if you find that the People have proven beyond a reasonable doubt both of the elements, you must

consider an affirmative defense the defendant has raised. Remember, if you have already found the defendant not guilty of Coercion in the First Degree you will not consider the affirmative defense.

Under our law, it is an affirmative defense to the charge of Coercion committed by instilling in the victim a fear that he/she or another person would be charged with a crime, that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge.[8]

Under our law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider evidence introduced by the People or by the defendant.

A preponderance of the evidence means the greater part of the believable and reliable evidence, not in terms of the number of witnesses or the length of time taken to present the evidence, but in terms of its quality and the weight and convincing effect it has. For the affirmative defense to be proved by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to outweigh any evidence to the contrary.

Therefore, if you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based upon your initial determination that the People had proven beyond a reasonable doubt the elements of Coercion in the Second Degree, you must find the defendant guilty of that crime as charge in the _____ count.

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[8] Penal Law § 135.75.

On the other hand, if you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not guilty of Coercion in the Second Degree as charged in the _____ count.]