

BRIBE RECEIVING BY A WITNESS
(Avoiding Testimony)
Penal Law § 215.05(b)
(Committed on or after Sept. 1, 1967)

The (*specify*) count is Bribe Receiving by a Witness.

Under our law, a witness or a person about to be called as a witness in any action or proceeding is guilty of Bribe Receiving by a Witness when that person solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that he or she will absent himself or herself from, or otherwise avoid or seek to avoid appearing or testifying at, such action or proceeding.

The following terms used in that definition have a special meaning:

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.¹

AGREEMENT means a mutual agreement between a witness and another person from whom such witness solicits, accepts or agrees to accept any benefit that such witness will absent himself or herself from, or otherwise avoid or seek to avoid appearing or testifying at, such action or proceeding.²

UNDERSTANDING means at least a unilateral perception or belief by a witness who solicits, accepts or agrees to accept any benefit from another person that the witness will absent himself or herself from, or otherwise avoid or seek to avoid

¹ Penal Law § 10.00(17).

² *Cf. People v. Tran*, 80 N.Y.2d 170 (1992) (discussing "agreement or understanding" in context of bribing a public servant).

appearing or testifying at, such action or proceeding.³

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

1. That on or about (date), the defendant (defendant's name) was a witness or a person about to be called as a witness in an action or proceeding;
2. That on that date, in the county of (county), the defendant solicited, accepted, or agreed to accept a benefit from (specify); and
3. That the defendant did so upon an agreement or understanding that he/she would absent himself/herself from, or otherwise avoid or seek to avoid appearing or testifying at, such action or proceeding.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

³

Id.