

**COMPOUNDING A CRIME**  
**(Soliciting a benefit)**  
**Penal Law § 215.45(1)(a)**  
**(Committed on or after Sept. 1, 1967)**

The (specify) count is Compounding a Crime.

Under our law, a person is guilty of Compounding a Crime when he or she solicits, accepts or agrees to accept any benefit upon an agreement or understanding that he or she will refrain from initiating a prosecution for a crime.

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.<sup>1</sup>

**AGREEMENT** means a mutual agreement between a person who solicits, accepts or agrees to accept a benefit and another/others that such person will refrain from initiating a prosecution for a crime.<sup>2</sup>

**UNDERSTANDING** means at least a unilateral perception or belief by a person who solicits, accepts or agrees to accept a benefit that he or she will refrain from initiating a prosecution for a crime.<sup>3</sup>

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, both of the following elements:

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1 Penal Law § 10.00(17).

2 *Cf. People v Tran*, 80 NY2d 170 (1992) (discussing “agreement or understanding” in context of bribing a public servant).

3 *Id.*

1. That on or about (date), in the County of (County), the defendant, (defendant's name), solicited, accepted or agreed to accept a benefit; and
2. That he/she did so upon an agreement or understanding that he/she would refrain from initiating a prosecution for a crime.

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

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

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

*Note: If the affirmative defense does apply, conclude 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 Compounding a Crime.

If you find that the People have proven beyond a reasonable doubt both of those elements, you must consider an affirmative defense the defendant has raised. Remember, if you have already found the defendant not guilty of Compounding a Crime, you will not consider the affirmative defense.

Under our law, it is an affirmative defense to this charge of Compounding a Crime that the benefit did not exceed an amount which the defendant reasonably believed to be due as restitution or indemnification for harm caused by the crime.<sup>4</sup>

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<sup>4</sup> Penal Law § 215.45(2).

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.

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 Compounding a Crime, you must find the defendant guilty of that crime.

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 Compounding a Crime.]