

**BRIBERY IN THE SECOND DEGREE**  
**Penal Law § 200.03**  
**(Committed on or after November 1, 1986)**

The (specify) count is Bribery in the Second Degree.

Under our law, a person is guilty of bribery in the second degree when he or she confers, or offers or agrees to confer, any benefit valued in excess of ten thousand dollars (\$10,000) upon a public servant upon an agreement or understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

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>

**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.]<sup>2</sup>

**AGREEMENT** means a mutual agreement between a public servant and a person who confers, or offers or agrees to confer, any benefit valued in excess of ten thousand dollars (\$10,000) upon such public servant that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public

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<sup>1</sup> Penal Law § 10.00(17).

<sup>2</sup> Penal Law § 10.00(15).

servant will thereby be influenced.<sup>3</sup>

UNDERSTANDING means at least a unilateral perception or belief by the defendant that a public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will be influenced by the conferring of, the offering of, or the agreeing to confer any benefit valued in excess of ten thousand dollars (\$10,000) upon that public servant.<sup>4</sup>

If a benefit is offered or conferred with only the hope that the public servant will be influenced thereby, then this crime is not committed.<sup>5</sup>

Under our law, it is no defense to this charge that the public servant did not have power or authority to perform the act or omission for which the alleged bribe, gratuity or reward was given.<sup>6</sup>

*[Note: where appropriate, add the following:*

In any prosecution for bribery, it is a defense that the defendant conferred or agreed to confer the benefit involved upon the public servant involved as a result of conduct of the public servant constituting:

*Select appropriate crime(s):*

larceny committed by means of extortion, or  
an attempt to commit larceny by means of extortion, or  
coercion, or

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<sup>3</sup> See *People v. Tran*, 80 N.Y.2d 170 (1992).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Penal Law § 200.15

an attempt to commit coercion.<sup>7</sup>

*Read the definition of the crime(s) selected.*

The defense having been raised in this case, the People have the burden of disproving the defense beyond a reasonable doubt.]

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, the following three [four] elements:

1. That on or about     (date)    , (specify) was a public servant;

2. That on or about that date, in the county of (county), the defendant, (defendant's name), conferred, or offered, or agreed to confer, a benefit valued in excess of ten thousand dollars (\$10,000) upon (specify); [and]

3. That the defendant did so upon an agreement or understanding that (specify)'s vote, opinion, judgment, action, decision or exercise of discretion as a public servant would thereby be influenced; [and]

*[Note: where appropriate, add the following:*

4. The defendant did not confer or agree to confer the benefit involved upon (specify) as a result of conduct of (specify) constituting:

*Select appropriate crime(s):*

larceny committed by means of extortion, or  
an attempt to commit larceny by means of extortion, or  
coercion, or

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<sup>7</sup> Penal Law § 200.05

an attempt to commit coercion. <sup>8]</sup>

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.

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<sup>8</sup> Penal Law § 200.05