

BRIBERY IN THE FIRST DEGREE
Penal Law § 200.04
(Committed on or after September 1, 1973)

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

Under our law, a person is guilty of bribery in the first degree when he or she confers, or offers or agrees to confer, any benefit 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 in the investigation, arrest, detention, prosecution, or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of the penal law or an attempt to commit any such class A felony.

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

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.]²

AGREEMENT means a mutual agreement between a public servant and a person who confers, or offers or agrees to confer, any benefit upon such public servant that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant in the investigation, arrest,

¹ Penal Law § 10.00(17).

² Penal Law § 10.00(15).

detention, prosecution, or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of the penal law or an attempt to commit any such class A felony will thereby be influenced.³

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 in the investigation, arrest, detention, prosecution, or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of the penal law or an attempt to commit any such class A felony will be influenced by the conferring of, the offering of, or the agreeing to confer any benefit upon that public servant.⁴

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.⁵

Under our law, (*specify*) is a class A felony defined in article two hundred twenty of the penal law.

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.

[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

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

⁴ *Id.*

⁵ *Id.*

⁶ Penal Law § 200.15

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
an attempt to commit coercion. ⁷

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 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 in the investigation, arrest, detention, prosecution, or incarceration of any person for the commission or alleged commission of (specify) or an attempt to commit such felony; [and]

[Note: where appropriate, add the following:

⁷ Penal Law § 200.05

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
an attempt to commit coercion. ^{8]}

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.

⁸ Penal Law § 200.05