

BRIBE RECEIVING IN THE SECOND DEGREE
Penal Law § 200.11
(Committed on or after November 1, 1986)

The (specify) count is Bribe Receiving in the Second Degree.

Under our law, a public servant is guilty of bribe receiving in the second degree when he or she solicits, accepts or agrees to accept any benefit valued in excess of ten thousand dollars (\$10,000) from another person upon an agreement or understanding that his 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.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 from whom he or she solicits, accepts or agrees to accept any benefit, valued in excess of ten thousand dollars (\$10,000), that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public

¹ Penal Law § 10.00(17).

² Penal Law § 10.00(15).

servant will thereby be influenced.³

UNDERSTANDING means at least a unilateral perception or belief by a public servant who solicits, accepts or agrees to accept any benefit, valued in excess of ten thousand dollars (\$10,000), from another person that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.⁴

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.⁵

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 elements:

1. That on or about (date) , the defendant, (defendant's name), was a public servant;

2. That on or about that date, in the county of (county), the defendant solicited, accepted or agreed to accept any benefit valued in excess of ten thousand dollars (\$10,000) from (specify);

³ The definition provided has been drawn from *People v. Tran*, 80 N.Y.2d 170 (1992), which defined the term "understanding" in the context of a bribe giving rather than a bribe receiving case. The Court of Appeals has not specifically adopted a definition of the term "understanding" in the context of a bribe receiving case.

⁴ *Id.*

⁵ Penal Law § 200.15 . See also Penal Law § 200.15(1) which states that:
" The crimes of (a) bribe receiving, and (b) larceny committed by means of extortion, attempt to commit the same, coercion and attempt to commit coercion, are not mutually exclusive, and it is no defense to a prosecution for bribe receiving that, by reason of the same conduct, the defendant also committed one of such other specified crimes."

and

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

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.