

AGGRAVATED ENTERPRISE CORRUPTION
PENAL LAW 460.22
(Committed on or after March 16, 2013)

Note: The following charge is to be used when the defendant is also charged with Enterprise Corruption; the pattern criminal acts for the Enterprise Corruption count consist exclusively of crimes charged in separate counts of the indictment and/or lesser included offenses of those crimes, the pattern criminal acts for the Aggravated Enterprise Corruption count consist exclusively of crimes charged in the Enterprise Corruption count or of those crimes and one or more counts of Criminal Purchase or Disposal of a Firearm, and the jury is charged on each of those pattern criminal acts and on Enterprise Corruption before being charged on Aggravated Enterprise Corruption.¹

The (specify) count is Aggravated Enterprise Corruption.

¹ For purposes of aggravated enterprise corruption, an “act” is a “criminal act,” as that term is defined in Penal Law § 460.10 (1) (a) for purposes of the crime of Enterprise Corruption.

Criminal Purchase or Disposal of a Firearm, Penal Law § 265.17 (2), however, is not one of the crimes included in the definition of “criminal act” in Penal Law § 460.10 (1) (a); thus, that crime may not be included in the pattern of criminal acts charged in an Enterprise Corruption count.

In order to be guilty of Aggravated Enterprise Corruption, a person must commit the crime of Enterprise Corruption, and thus the prosecution must meet that requirement, without relying on any acts of Criminal Purchase or Disposal of a Firearm. Nonetheless, a charge of Aggravated Enterprise Corruption, as defined by Penal Law § 460.22, may be based in part on a pattern that, while meeting the Enterprise Corruption requirements, includes, in addition, one or more acts of Criminal Purchase or Disposal of a Firearm. Accordingly, when an Aggravated Criminal Enterprise charge is based in part on such acts, they may be included as part of the defendant’s pattern for the Aggravated Enterprise Corruption count, even though they may not be included for purposes of Enterprise Corruption.

You should consider this count only if you have first considered and found the defendant guilty of the crime of Enterprise Corruption.

Under our law, a person is guilty of Aggravated Enterprise Corruption when he or she commits the crime of Enterprise Corruption and two or more of the acts that constitute his or her pattern of criminal activity are: [specify those criminal acts alleged to be part of the pattern that are class A or Class B felonies], and

Select appropriate alternative(s):

at least two of the acts are: [specify those criminal acts alleged to be part of the pattern that are armed felonies as defined in CPL 1.20 (41) (a)]

or

at least one act is: [specify those criminal acts alleged to be part of the pattern that are armed felonies as defined in CPL 1.20 (41) (a)²] and one act is Criminal Purchase or Disposal of a Firearm];

or

one act is [specify those criminal acts alleged to be part of the pattern that are class B violent felonies³] and two are Criminal Purchase or Disposal of a Firearm.

I remind you that for conduct to be part of A PATTERN OF CRIMINAL ACTIVITY it must either

be committed by members or associates of the criminal

² Penal Law § 460.22 does not explicitly state whether the two acts that are class A or B felonies must be different from the act or acts that are armed felonies.

³ Penal Law § 460.22 does not explicitly state whether the two acts that are class A or B felonies must be different from the act that is a violent felony.

enterprise or

be related to one another through a common scheme or plan, but are neither isolated incidents, nor so closely related and connected in point of time or circumstance of commission as to constitute a single criminal offense or criminal transaction.

In this case, the defendant is charged with the following criminal acts:

NOTE: The court should here list crimes charged in each count which is an A or B felony, armed felony, violent felony and/or Criminal Purchase or Disposal of a Firearm, including the count number for each.

I have already defined the crimes charged in these counts for you, and, in your deliberations, you will consider the counts charging those crimes first. You may find that the defendant's pattern of criminal activity includes any one of those crimes only if you first find the defendant guilty of that crime.

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

1. That on or about and between (*dates*), the defendant, (*defendant's name*) committed the crime of enterprise corruption, as charged in the ___ count;
2. That two or more of the acts that constitute the defendant's pattern of criminal activity are: [*specify those criminal acts alleged to be part of the pattern that are class A or B felonies*], as charged in [*specify the count numbers*]; and

Select appropriate alternative(s):

3. That at least two of the criminal acts that constitute

the defendant's pattern of criminal activity are: [specify those criminal acts alleged to be part of the pattern that are armed felonies as defined in CPL 1.20 (41) (a)], as charged in [specify the count numbers];

or

That at least one of the acts that constitute the defendant's pattern of criminal activity is: [specify those criminal acts alleged to be part of the pattern that are armed felonies as defined in CPL 1.20 (41) (a)], as charged in [specify the count numbers]; and at least one of the acts that constitute the defendant's pattern of criminal activity is Criminal Purchase or Disposal of a Firearm, Penal Law § 265.17 (2), as charged in [specify the count number(s)].

or

That one [or more] act(s) is/are [specify the criminal act(s) alleged to be part of the pattern that is/are a class B violent felony/felonies] as charged in [specify the count number(s)]; and at least two of the acts that constitute the defendant's pattern of criminal activity are Criminal Purchase or Disposal of a Firearm, Penal Law § 265.17 (2), as charged in [specify the count numbers].

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.