

PUBLIC CORRUPTION¹
Penal Law § 496.06
(Committed on or after April 30, 2014)

The (*specify*) count is Public Corruption.

Under our law, a person commits the crime of public corruption when being a public servant he or she commits a specified offense through the use of his or her public office, [or being a person acting in concert with such public servant he or she commits a specified offense], and the state or any political subdivision thereof or any governmental instrumentality within the state is the owner of the property.

The following terms used in that definition have a special meaning:

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

¹ Penal Law § 496.07 provides that “[w]hen a person is convicted of the crime of public corruption pursuant to section 496.06 of this article and the specified offense is a class C, D or E felony, the crime shall be deemed to be one category higher than the specified offense the defendant committed, or one category higher than the offense level applicable to the defendant’s conviction for an attempt or conspiracy to commit a specified offense, whichever is applicable.” Penal Law § 496.06 (2) defines a “specified offense” as the crimes of petit larceny, grand larceny in each of its degrees, and scheme to defraud in both of its degrees. Thus, Penal Law § 496.07 fails to explicitly specify the level of offense for Public Corruption when the specified offense is petit larceny, a class A misdemeanor, or Grand Larceny in the First Degree, a class B felony.

² Penal Law § 10.00 (15).

(*Specify*³) is a specified offense.

[NOTE: If the specified offense has been separately charged, the jury should be instructed on that count first and that instruction should be cross-referenced here. If it has not been separately charged, then here read the statutory definition of the applicable offense and any necessary defined terms as set forth in CJI2d for that offense.]

NOTE: If the defendant is charged with “acting in concert with a public servant,” and the CJI2d Accomplice Liability instruction has not already been given, as recommended, prior to the instructions on the charged crimes, insert that charge here.

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, each of the following three/four elements:

If the defendant is charged as a public servant:

1. That on or about (*date*) , in the county of (*County*), the defendant, (*defendant's name*), being a public servant, committed the crime of (*specify*);
2. That the defendant did so through the use of his/her public office; and

³ “A ‘specified offense’ is an offense defined by any of the following provisions of this chapter: section 155.25 (petit larceny); section 155.30 (grand larceny in the fourth degree); section 155.35 (grand larceny in the third degree); section 155.40 (grand larceny in the second degree); section 155.42 (grand larceny in the first degree); section 190.60 (scheme to defraud in the second degree); or section 190.65 (scheme to defraud in the first degree)” (Penal Law § 496.06 [2]).

3. That the state [or a political subdivision of the state or a governmental instrumentality within the state] was the owner of the property the defendant thus obtained.

If the defendant is charged as acting in concert with a public servant:

1. That on or about (date) , in the county of (County), (specify public servant's name), being a public servant, committed the crime of (specify);
2. That the (specify public servant's name), did so through the use of his/her public office;
3. That on or about that date in the county of (County), the defendant, acting in concert with (specify public servant's name), committed that crime; and
4. That the state [or a political subdivision of the state or a governmental instrumentality within the state] was the owner of the property the defendant thus obtained.

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.