

**CRIMINAL SOLICITATION FIFTH DEGREE**  
**(Solicits crime)**  
**Penal Law § 100.00**  
**(Committed on or after Sept. 1, 1978)**

The (specify) count is Criminal Solicitation in the Fifth Degree.

Under our law, a person is guilty of Criminal Solicitation in the Fifth Degree when, with intent that another person engage in conduct constituting a crime, he or she solicits, requests, commands, importunes or otherwise attempts to cause such other person to engage in such conduct.

The following term used in that definition has a special meaning:

INTENT means conscious objective or purpose.<sup>1</sup> Thus, a person acts with the intent that another person engage in conduct constituting a crime when his or her conscious objective or purpose is that such other person engage in such conduct.

Under our law, (specify the solicited crime) is a crime. A person is guilty of (specify the solicited crime), when (read the applicable portion of the statutory definition of the solicited crime).

Under our law, it is no defense to a prosecution for criminal solicitation that the person solicited could not be guilty of the crime solicited owing to criminal irresponsibility or other legal incapacity or exemption, or to unawareness of the criminal nature of the conduct solicited or of the defendant's criminal purpose or to other factors precluding the mental state required for the commission of the crime in question.<sup>2</sup> In other words, a defendant may be convicted of solicitation even though the person solicited could not be guilty of (specify the crime solicited).

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<sup>1</sup> See Penal Law § 15.05(1). If necessary, an expanded definition of “intent” is available in the section on Instructions of General Applicability under Culpable Mental States.

<sup>2</sup> Penal Law § 100.15.

In order for you to find the defendant guilty of this offense, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, both of the following two elements:

1. That on or about (date), in the County of (county), the defendant, (defendant's name), solicited, requested, commanded, importuned, or otherwise attempted to cause another person, namely (specify), to engage in conduct constituting a crime, namely (specify); and
2. That the defendant did so with the intent that (specify) engage in that conduct.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this offense.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this offense.