CONSPIRACY
SECOND DEGREE
(B Felony)
(Conspiracy to commit class A felony)
PENAL LAW 105.15
(Committed on or after Sept. 1, 1978)

The _____ count is Conspiracy in the Second Degree.[1]

Under our law, a person is guilty of Conspiracy in the Second Degree when, with intent that conduct constituting a class A felony be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct.

The term "intent" used in this definition has its own special meaning in our law. I will now give you the meaning of that term.

INTENT means conscious objective or purpose.[2] Thus, a person acts with the intent that conduct constituting a class A felony be performed when his or her conscious objective or purpose is that such conduct be performed.

Under our law, *(specify the object felony)* is a class A felony. A person is guilty of *(specify the object felony)*, when *(read the applicable portion of the statutory definition of the object felony)*.

Under our law, the People must also prove that one of the conspirators committed an overt act in furtherance of the

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[1]This charge contemplates a single integrated conspiracy. Whenever the possibility of more than one conspiracy is supported by a reasonable view of the evidence, the jury must be charged in accordance with the law as set forth in *People v. Leisner,* 73 N.Y.2d 140 (1989).

[2] *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.

conspiracy.[3] The agreement to engage in or cause the performance of a crime is not itself an overt act. The overt act must be an independent act that tends to carry out the conspiracy. The overt act can be, but need not be, the commission of the crime that was the object of the conspiracy.[4]

In this case, the alleged overt act[s] is [are]: *(specify)*.

[Note: Add when and to the extent appropriate:

Under our law, it is no defense to a prosecution for conspiracy that, owing to criminal irresponsibility or other legal incapacity or exemption, or to unawareness of the criminal nature of the agreement or the object conduct or of the defendant's criminal purpose or to other factors precluding the mental state required for the commission of conspiracy or the object crime, one or more of the defendant's co-conspirators could not be guilty of conspiracy or the object crime.[5]

In other words, a defendant may be convicted of conspiracy even though one or more or all of the other parties to the agreement are not guilty of conspiracy or (*specify the object crime*).[6]]

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, each of the following three elements:

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[3] *See* Penal Law § 105.20.

[4] *See People v. Ribowsky,* 77 N.Y.2d 284 (1991).

[5] Penal Law § 105.30.

[6] See People v. Berkowitz, 50 N.Y.2d 333 (1980). In an appropriate case, the Court may add the reason one or more of the parties to the agreement is not liable by charging for example, "because that party is a police officer or an agent of a police officer pretending to agree to engage in or cause the performance of the *(specify object crime)*"; or, "because that party is under sixteen years of age."

1. That on or about ___*(date)*___, in the County of _ *(county)*___,[7] the defendant, *(defendant's name)*, agreed with one or more persons to engage in or cause the performance of conduct constituting the class A felony of *(specify object felony)*;

2. That the defendant did so with the intent that such conduct be performed; and

3. That the defendant, or one of the persons with whom he/she agreed to engage in or cause the performance of such conduct, committed [the] [at least one] alleged overt act in furtherance of the conspiracy.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Conspiracy in the Second Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Conspiracy in the Second Degree as charged in the _____ count.

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[7]If venue depends upon the place of the commission of an overt act rather than the situs of the agreement, refer to the county in the third element rather than in the first element. *See* Penal Law § 105.25(1).