

**OBSTRUCTING GOVERNMENTAL ADMINISTRATION
IN THE SECOND DEGREE**

Penal Law § 195.05 (1)

(Committed on or after November 1, 1998)

(Revised December 2013)¹

The (specify) count is Obstructing Governmental Administration in the Second Degree.

Under our law, a person is guilty of Obstructing Governmental Administration in the Second Degree when that person intentionally [obstructs, impairs or perverts the administration of law or other governmental function or] prevents or attempts to prevent a public servant from performing an official function,

Select appropriate alternative(s):

by means of intimidation, physical force or interference [or]

by means of any independently unlawful act [or]

by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service [or]

by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct governmental administration.

¹ The 2013 revision was for the purpose of including as an element, as required by case law, that the predicate administration of law or other governmental or official function was authorized (see footnote two).

Under our law, [the administration of law or other governmental function or] the official function the defendant is charged with having prevented or attempted to prevent a public servant from performing must have been authorized.²

Note: The Court should here explain what constitutes an “authorized” function in the context of the facts of the case. Examples of such a charge, include, but are not limited to, the following:

“A police officer’s arrest of any person [be it the defendant or a third party] is ‘authorized’ if the officer has probable cause to believe that a crime was committed and that such person committed that crime.”³

“A New York City police officer’s detention of a person as a truant, with the intention of transporting him or her to the Board of Education for further investigation and

² See *People v Lupinacci*, 191 AD2d 589 (2d Dept 1993) (“[A] defendant may not be convicted of obstructing governmental administration or interfering with an officer in the performance of an official function unless it is established that the police were engaged in authorized conduct [citations omitted].”); *People v Snyder*, 36 Misc 3d 137(A), 2012 NY Slip Op 51434 (U) (App Term, 2d Dept, 9th & 10th Jud Dists 2012) (“[A] defendant cannot be convicted of obstructing governmental administration in the second degree for interfering with a public servant in the performance of an official function unless it is established that the official function was an authorized one [citations omitted].”); *People v Vogel*, 116 Misc 2d 332, 333 (App Term, 2d Dept, 9th & 10th Jud Dists 1982) (“[T]he jury must be clearly instructed that defendant cannot be convicted [for obstructing governmental operations] unless the arrest was authorized [citation omitted].”). Compare *Matter of Shannon B.*, 70 NY2d 458, 461 (1987) (Because the police officer had authority to detain a suspected truant, “[defendant’s] acts of resistance, which included striking the officer, were acts which, if committed by an adult, would have constituted the crimes of obstructing governmental administration . . . and attempted assault in the second degree. . .”).

³ See CPL 140.10 (1) (a).

processing, is 'authorized conduct' if the officer has a factual basis for suspecting the person to be a truant.”⁴

“A police officer’s detention of a person is ‘authorized’ if the officer has reasonable suspicion to believe that the person is involved in criminal activity.”⁵

“A code enforcement officer’s investigation of the manner in which a person’s property is being used is ‘authorized conduct’ if the officer is investigating a complaint that the person may have been violating a Town Code.”⁶

“A police officer’s administration of an alcohol breath test to a driver is ‘authorized conduct’ if the officer does so for the purpose of determining whether the driver can safely drive a vehicle and the driver consents to the test.”⁷

The following term(s) used in that definition has/have a special meaning:

Intent means conscious objective or purpose.⁸ Thus, a person INTENTIONALLY [obstructs, impairs or perverts the administration of law or other governmental function or] prevents or attempts to prevent a public servant from performing an official function when that person’s conscious objective or purpose is to do so.

[PUBLIC SERVANT means any public officer or employee of the state or of any political subdivision thereof or of any

⁴ See *Matter of Shannon B.*, 70 NY2d 458, 461 (1987).

⁵ See *People v Lupinacci*, 191 AD2d 589 (2d Dept 1993).

⁶ See *People v Gibbs*, 15 Misc 3d 128(A), 2007 WL 926347, (App Term, 2d Dept, 9th & 10th Jud Dists 2007).

⁷ See *People v Mitchell*, 7 Misc 3d 131(A), 2005 WL 887138 (App Term, 2d Dept, 9th & 10th Jud Dists 2005).

⁸ See Penal Law § 15.05 (1).

governmental instrumentality within the state, or any person exercising the functions of any such public officer or employee.^{9]}

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 elements:

1. That on or about (date), in the county of (County) , the defendant, (defendant's name) , [obstructed, impaired or perverted the administration of law or other governmental function or] prevented or attempted to prevent a public servant from performing an official function;

2. That the defendant did so intentionally, and:

Select appropriate alternative(s):

by means of intimidation, physical force or interference [or]

by means of any independently unlawful act [or]

by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service; [or]

by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct governmental administration;

and

3. That [the administration of law or other governmental function or] the official function was authorized.

⁹ See Penal Law § 10.00 (15). The term "public servant" includes a person who has been elected or designated to become a public servant.

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.