

BRIBING A WITNESS
(D Felony)
(Avoiding Testimony)
PENAL LAW § 215.00(b)
(Committed on or after Sept. 1, 1967)

The _____ count is Bribing a Witness.

Under our law, a person is guilty of Bribing a Witness when that person confers, or offers or agrees to confer, any benefit upon a witness or a person about to be called as a witness in any action or proceeding upon an agreement or understanding that such witness will absent himself or herself from, or otherwise avoid or seek to avoid appearing or testifying at, such action or proceeding.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "benefit," "agreement," and "understanding."

BENEFIT means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.¹

AGREEMENT means a mutual agreement between a witness and a person who confers, or offers or agrees to confer, any benefit upon such witness that such witness will absent himself or herself from, or otherwise avoid or seek to avoid appearing or testifying in such action or proceeding.²

UNDERSTANDING means at least a unilateral perception or belief by a person that a witness will absent himself or herself from, or otherwise avoid or seek to avoid appearing or testifying in an action or proceeding, by that person's conferring, offering to

¹ Penal Law § 10.00(17).

² *Cf. People v. Tran*, 80 N.Y.2d 170 (1992) (defining "agreement or understanding" in context of bribing a public servant).

confer, or agreeing to confer a benefit upon that witness.³

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:

1. That on or about (date), (specify) was a witness or a person about to be called as a witness in an action or proceeding;
2. That on that date, in the county of (county), the defendant, (defendant's name), conferred, or offered or agreed to confer, a benefit upon (specify); and
3. That the defendant did so upon an agreement or understanding that (specify) would absent himself/herself from, or otherwise avoid or seek to avoid appearing or testifying at, such action or proceeding.

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

³

Id.