

ENTERPRISE CORRUPTION
(B Felony)
(Conducts or Participates in the
Affairs of a Criminal Enterprise)
PENAL LAW 460.20 (1) (a)
(Committed on or after Nov. 1, 1986)

Note: The following charge is to be used when the pattern criminal acts consist exclusively of crimes charged in separate counts of the indictment and/or lesser included offenses of those crimes, and the jury is charged on those pattern criminal acts before being charged on Enterprise Corruption.

The _____ count is Enterprise Corruption.

Enterprise Corruption is unlike any of the other crimes I have defined for you thus far. Each of those other crimes constitutes a single criminal act or transaction.

Enterprise corruption, on the other hand, involves the commission of a number of individual criminal acts, all committed [either personally or in concert with another/others] by a person who is employed by or associated with a criminal enterprise, and who acts with the intent to participate in or advance the affairs of that criminal enterprise.

Now, what do I mean by the term, "criminal enterprise"?

First I tell you that, under our law, an ENTERPRISE can be either legitimate or criminal.

A LEGITIMATE ENTERPRISE is any entity of one or more persons, corporate or otherwise, public or private, that is engaged in business, commercial, professional, industrial, charitable, social, political or governmental activity.¹ Thus a legitimate enterprise is any lawful and legally recognized entity such as a business, a governmental agency, a charity, or a labor union.

In contrast, a CRIMINAL ENTERPRISE is an entity that is not legitimate or lawful. Under our law, a criminal enterprise means a group of persons sharing a common purpose of engaging in criminal conduct, associated in an ascertainable structure distinct from a pattern of criminal activity, and with a continuity of existence, structure and criminal purpose beyond the scope of individual criminal incidents.²

What that means is that a criminal enterprise exists when two or more individuals, all sharing a common purpose of engaging in criminal conduct, come together and become associated in a group that has a defined structure, a continuing existence, and a criminal purpose that extends beyond the commission of individual criminal acts.

In order for a person who is employed by or associated with a criminal enterprise to commit the crime of Enterprise Corruption, he or she must intentionally conduct or participate in the affairs of that criminal enterprise [or any other enterprise],³ and must do so by participating in a pattern of criminal activity.

¹ See Penal Law §§ 460.10(2), 175.00(1). The word “charitable” has been substituted for the word “eleemosynary” used in the statutory definition.

² Penal Law §460.10(3).

³ Penal Law § 460.20 (3) provides that “the enterprise corrupted *** need not be the criminal enterprise by which the person is employed or with which he is associated, and may be a legitimate enterprise.” The jury should be so instructed where applicable.

A PATTERN OF CRIMINAL ACTIVITY means conduct constituting three or more criminal acts that are

either committed by members or associates of the criminal enterprise

or are related to one another through a common scheme or plan, but are neither isolated incidents, nor so closely related and connected in point of time or circumstance of commission as to constitute a single criminal offense or criminal transaction.⁴

Under our law, a person PARTICIPATES IN A PATTERN OF CRIMINAL ACTIVITY when, with intent to participate in or advance the affairs of a criminal enterprise, he or she engages in conduct constituting [or by acting in concert with (another) (other) person(s), is criminally liable for⁵] at least three

⁴ Penal Law §460.10(4) provides: “‘Pattern of criminal activity’ means conduct engaged in by persons charged in an enterprise corruption count constituting three or more criminal acts that: (a) were committed within ten years of the commencement of the criminal action; (b) are neither isolated incidents, nor so closely related and connected in point of time or circumstance of commission as to constitute a criminal offense or criminal transaction, as those terms are defined in section 40.10 of the criminal procedure law; and (c) are either: (i) related to one another through a common scheme or plan or (ii) were committed, solicited, requested, importuned or intentionally aided by persons acting with the mental culpability required for the commission thereof and associated with or in the criminal enterprise.” This charge, which has re-ordered the statutory language for the sake of clarity, assumes that there are no factual issues for the jury to decide regarding the dates of commission of the crimes charged as pattern criminal acts, and whether they were committed within ten years of the commencement of the criminal action. If such an issue is presented, the charge should be modified accordingly. Where necessary, the jury should also be charged on the definitions of the terms “criminal offense” and/or “criminal transaction” (see CPL 40.10).

⁵ The statutory language corresponding to the bracketed portion of this definition reads: “or, is criminally liable for pursuant to section 20.00 of this chapter...” If applicable, charge the jury on accessorial liability (see CJ12d [NY] Accessorial Liability [Revised August 3, 2004]).

criminal acts that are included in a pattern of criminal activity.⁶

In other words, in order for a person to commit the crime of Enterprise Corruption, he or she must be employed by or associated with a criminal enterprise, and, acting with the intent to participate in or advance the affairs of that criminal enterprise, he or she must intentionally conduct or participate in the affairs of that criminal enterprise [or any other enterprise] by engaging in conduct constituting [or by acting in concert with (another) (other) person(s), is criminally liable for] at least three criminal acts that are part of a pattern of criminal activity – that is, at least three criminal acts that are either committed by members or associates of the criminal enterprise or are related to one another through a common scheme or plan, but are neither isolated incidents, nor so closely related and connected in point of time or circumstance of commission as to constitute a single criminal offense or criminal transaction.

In this case, the People allege that the defendant engaged in conduct constituting (*specify number*) pattern criminal acts, namely, the crimes of (*specify the pattern criminal acts listed in CPL 460.10[1] and submitted to the jury either as separate counts in the indictment or as lesser included offenses of those counts*).

⁶ Penal Law §460.20(2) provides in pertinent part: “[A] person participates in a pattern of criminal activity when, with intent to participate in or advance the affairs of the criminal enterprise, he engages in conduct constituting, or, is criminally liable for pursuant to section 20.00 of this chapter, at least three of the criminal acts included in the pattern, provided that: (a) Two of his acts are felonies other than conspiracy; (b) Two of his acts, one of which is a felony, occurred within five years of the commencement of the criminal action; and (c) Each of his acts occurred within three years of a prior act. This charge, which has modified the statutory language for the sake of clarity, assumes that neither the grade nor the date of commission of any of the charged pattern criminal acts presents an issue of fact for the jury to decide. If such an issue is presented, the charge should be modified accordingly.

I have already defined each of those crimes for you, and, in your deliberations, you will consider the counts charging those crimes first.

If, after your deliberations on those counts, you as a jury do not find the defendant guilty of [at least three of those] [those three] counts, you will not consider this count of Enterprise Corruption, and will return no verdict, either guilty or not guilty, on it.⁷

On the other hand, if, after your deliberations on those counts, you as a jury find the defendant guilty of [at least three of those] [those three] counts, then you must proceed to consider this count of Enterprise Corruption.

All of this will be explained to you in a verdict sheet that I have prepared for your convenience and your use.

In the event that you as a jury do find the defendant guilty of [at least three of those] [those three] counts, and you then go on to consider this count of Enterprise Corruption, you must consider the law's full definition of that crime.

Under our law, a person is guilty of Enterprise Corruption when, having knowledge of the existence of a criminal enterprise and the nature of its activities, and being employed by or associated with such criminal⁸ enterprise, he or she intentionally conducts or participates in the affairs of that criminal enterprise [or any other enterprise] by

⁷ CPL 300.10(6) provides in pertinent part that the Court must "explain to the jury that they may not consider a charge of enterprise corruption against any defendant until they have separately and unanimously agreed that the defendant has committed each of at least three criminal acts alleged as part of the pattern of criminal activity, including any submitted lesser included offenses."

⁸ The word "criminal" has been added at this point for clarity.

participating in a pattern of criminal activity.⁹

Intent means conscious objective or purpose.¹⁰ Thus, a person INTENTIONALLY conducts or participates in the affairs of an enterprise by participating in a pattern of criminal activity when his or her conscious objective or purpose is to do so.

Thus, to commit the crime of Enterprise Corruption,

a person must be employed by or associated with a criminal enterprise;

the person must have knowledge, not only of the existence of the criminal enterprise, but also of the nature of its activities;

the person must intentionally conduct or participate in the affairs of that criminal enterprise [or of any other enterprise]; and

the person must do so by participating in a pattern of criminal activity, that is, by engaging in conduct constituting [or by acting in concert with (another) (other) person(s), is criminally liable for¹¹] at least three criminal acts that are included in a pattern of criminal activity, and must do so with the intent to participate in or advance the affairs of the criminal enterprise.

⁹ The final portion of the statutory definition reads: “he intentionally conducts or participates in the affairs of an enterprise by participating in a pattern of criminal activity.” The language has been modified for clarity and gender neutrality.

¹⁰ See Penal Law §15.05(1).

¹¹ The statutory language corresponding to the bracketed portion of this definition reads: “or, is criminally liable for pursuant to section 20.00 of this chapter...” If applicable, charge the jury on accessorial liability (see, CJ12d [NY] Accessorial Liability [Revised July 29, 2002]).

In this case, therefore, in order for you to find the defendant guilty of the crime of Enterprise Corruption, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following five elements:

1. That on or about and between (dates), a criminal enterprise existed;
2. That, during that period, the defendant, (defendant's name), had knowledge of the existence of that criminal enterprise and the nature of its activities;
3. That, during that period, the defendant was employed by or associated with that criminal enterprise;
4. That on or about and between (dates), the defendant conducted or participated in the affairs of that criminal enterprise [or some other enterprise] by participating in a pattern of criminal activity; and
5. That the defendant did so intentionally.

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 Enterprise Corruption 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 Enterprise Corruption as charged in the _____ count.