

**CORRUPTING OR INFLUENCING A JURY**  
**(N.J.S.A. 2C:29-8)<sup>1</sup>**

The defendant is charged with the crime of corrupting or influencing a jury. The indictment reads in pertinent part as follows:

**(Read indictment)**

This indictment is based on a statute which provides:

Any person who, directly or indirectly, corrupts, influences or attempts to corrupt or influence a jury or juror to be more favorable to the one side than to the other by promises, persuasions, entreaties, threats, letters, money, entertainment or other sinister means; or any person who employs any unfair or fraudulent practice, art or contrivance to obtain a verdict, or attempts to instruct a jury or juror beforehand at any place or time, or in any manner or way, except in open court at the trial of the cause, by the strength of the evidence, the arguments of the parties or their counsel, or the opinion or charge of the court is guilty of a crime.

In order for you to find the defendant guilty of this offense, the State is required to prove each of the following elements beyond a reasonable doubt:

**(Charge as Appropriate)**

(1a) that the defendant, directly or indirectly, corrupted, [or] influenced [or attempted to corrupt or influence] a jury or juror to be more favorable to one side than to the other by promises, persuasions, entreaties, threats, letters, money, entertainment or other sinister means;

**(and/or)**

(1b) that defendant employed any unfair or fraudulent practice, art or contrivance to obtain a verdict, [or attempted to instruct a jury or juror beforehand] at any place or time, or in any manner or way, except in open court during the course of the trial, by the strength of the evidence, the arguments of the parties or their counsel or the opinion or charge of the court; and

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<sup>1</sup> N.J.S.A. 2C:29-8 was amended by L. 2009, c. 169, § 1, to upgrade the offense in subsection (a) to a first-degree crime. The amendment was made effective January 9, 2010.

**CORRUPTING OR INFLUENCING A JURY**

**(N.J.S.A. 2C:29-8)**

**Page 2 of 9**

**(Charge as Appropriate)**

(2a) that defendant acted knowingly.

**(and/or)**

(2b) that defendant attempted to corrupt or influence the jury.

The first element that the State must prove beyond a reasonable doubt is that the defendant, directly or indirectly, corrupted, [or] influenced [or attempted to corrupt or influence] a jury or juror to be more favorable to one side than to the other by either promises, persuasions, entreaties, threats, letters, money, entertainment or other sinister means;

**(and/or)**

That defendant employed any unfair or fraudulent practice, art or contrivance to obtain a verdict, [or attempted to instruct a jury or juror beforehand] at any place or time, or in any manner or way, except in open court during the course of the trial, by the strength of the evidence, the arguments of the parties or their counsel or the opinion or charge of the court.

The second element that the State must prove beyond a reasonable doubt is that the defendant acted knowingly.

A person acts knowingly with respect to the nature of (his/her) conduct or the attendant circumstances if (he/she) is aware that (his/her) conduct is of that nature, or that such circumstances exist, or (he/she) is aware of a high probability of their existence.

A person acts knowingly with respect to a result of (his/her) conduct if (he/she) is aware that it is practically certain that (his/her) conduct will cause such a result. "Knowing," "with knowledge" or equivalent terms have the same meaning.

Knowledge is a condition of the mind. It cannot be seen. It can only be determined by inferences from defendant's conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inferences which may arise from the nature of his/her acts and conduct and from all

**CORRUPTING OR INFLUENCING A JURY**

**(N.J.S.A. 2C:29-8)**

**Page 3 of 9**

he/she said and did at the particular time and place and from all surrounding circumstances established by the evidence.

**(and/or)**

**ALTERNATIVE I**

**[To be used when defendant is charged with Attempt]**

The second element that the State must prove beyond a reasonable doubt is that the defendant attempted to corrupt or influence a jury.

**ALTERNATIVE II**

[If the facts raise the question whether the crime was completed, the jury should be instructed to "turn to a consideration of whether an attempt to commit the crime has been established."<sup>2</sup>]

The indictment charges that the defendant committed the crime of corrupting or influencing a jury. If you find that the State has failed to prove beyond a reasonable doubt that the crime of corrupting or influencing a jury was committed, then you should consider whether an attempt to commit the crime has been established.

**[If “knowing” or lesser culpability would have sufficed for the completed crime, add the following]**

Before I explain the definition of an attempt, let me explain an important difference between an attempt and the crime of corrupting or influencing a jury. Although it is possible to commit the crime of corrupting or influencing a jury with [knowledge], to be guilty of an attempt the defendant must act with purpose. In other words, the defendant must have the purpose to commit the crime of corrupting or influencing a jury, in order to be guilty of attempting it.<sup>3</sup>

**[MAIN CHARGE]**

The law provides that a person is guilty of an attempt to commit a crime if the person:<sup>4</sup>

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<sup>2</sup> N.J.S.A. 2C:1-8d(2).

<sup>3</sup> State v. Rhett, 127 N.J. 3, 6-7 (1992); State v. Robinson, 136 N.J. 476, 485-86 (1994).

<sup>4</sup> Because all attempts must be purposeful, State v. Rhett, 136 N.J. 476; State v. Robinson, 127 N.J. 3, and because other portions of the statute include the requirement of purpose, the language in N.J.S.A. 2C:5-1a, “acting with the kind of culpability otherwise required for the commission of the crime,” should not be charged.

**CORRUPTING OR INFLUENCING A JURY**

**(N.J.S.A. 2C:29-8)**

**Page 4 of 9**

**[Select the appropriate section]**

**[(1) Attempt - Impossibility]**

Purposely engages in conduct which would constitute the crime if the attendant circumstances were as a reasonable person would believe them to be;

**[or]**

**[(2) Attempt - When Causing a Particular Result is an Element of the Crime]**

Does or omits to do anything with the purpose of causing [result] without further conduct on (his/her) part.

**[or]**

**[(3) Attempt-Substantial Step]**

Purposely does or omits to do anything which, under the circumstances as a reasonable person would believe them to be, is an act or omission constituting a substantial step in the course of conduct planned to culminate in (his/her) commission of the crime.

Thus, in order to find the defendant guilty of a criminal attempt, the State must prove two elements beyond a reasonable doubt:

**[Select the appropriate Section]**

**[(1) Attempt - Impossibility]**

The first element is that the defendant acted purposely. A defendant acts purposely with respect to the nature of (his/her) conduct or a result thereof if it is (his/her) conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if (he/she) is aware of the existence of such circumstances or (he/she) believes or hopes that they exist.

The second element is that the defendant engaged in conduct which would constitute the crime of corrupting or influencing a jury had the facts been as a reasonable person would have believed them to be.

**[Here define the crime allegedly attempted if it has not been defined already, or refer jurors to the definition previously charged]**

## **CORRUPTING OR INFLUENCING A JURY**

**(N.J.S.A. 2C:29-8)**

**Page 5 of 9**

If the accused purposely engaged in conduct that would constitute the crime of corrupting or influencing a jury had the facts been as a reasonable person would have believed them to be, you should consider that conduct as evidence of guilt of attempt to commit corrupting or influencing a jury. It does not matter that the defendant failed to accomplish (his/her) intended result because the facts were not as a reasonable person would have believed them to be; it is no defense that the defendant could not succeed in reaching (his/her) intended result because of circumstances unknown to (him/her). However, there cannot be an attempt to commit a crime unless the attempt, if completed, would have constituted the crime.<sup>5</sup>

**[or]**

### **[(2) When Causing a Particular Result is an Element of the Crime]**

First, that the defendant had the purpose to cause [here state the result that is an element of the alleged attempted crime]. A defendant acts purposely with respect to the nature of (his/her) conduct or a result thereof if it is (his/her) conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if (he/she) is aware of the existence of such circumstances or (he/she) believes or hopes that they exist.

The second element is that the defendant did or omitted to do anything to cause [state the result which is an element] without further conduct or action on (his/her) part. Where the accused has done all that (he/she) believes necessary to cause [state the result which is an element], you should consider that as evidence of guilt of an attempt to commit corrupting or influencing a jury.

**[or]**

### **[(3) Substantial Step]**

First, that the defendant had the purpose to committing the crime of corrupting or influencing a jury. A defendant acts purposely with respect to the nature of (his/her) conduct or a result thereof if it is (his/her) conscious object to engage in conduct of that

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<sup>5</sup> Final Report of the New Jersey Criminal Law Revision Commission, Vol. II: Commentary, pp.114-115, quoting from State v. Moretti, 52 N.J. 182, 186-90 (1968). N.J.S.A. 2C:5-1a(1) rejects outright the defense of impossibility.

**CORRUPTING OR INFLUENCING A JURY**

**(N.J.S.A. 2C:29-8)**

**Page 6 of 9**

nature or to cause such a result. A person acts purposely with respect to attendant circumstances if (he/she) is aware of the existence of such circumstances or (he/she) believes or hopes that they exist.

The second element is that the defendant purposely did or omitted to do anything, which, under the circumstances as a reasonable person would believe them to be, is an act or omission that is a substantial step in the course of conduct planned to culminate in (his/her) commission of the crime. However, the step taken must strongly show the defendant's criminal purpose. That is, the step taken must be substantial and not just a very remote preparatory act, and must show that the accused has a firmness of criminal purpose.

**[Charge in Every Case Except One Involving the Renunciation Defense]**

If you find that the State has proven each of these elements beyond a reasonable doubt, then you must find the defendant guilty of an attempt to commit corrupting or influencing a jury. However, if you find that the State failed to prove any of these elements beyond a reasonable doubt, then you must find the defendant not guilty of an attempt to commit corrupting or influencing a jury.

**[Charge Where Appropriate]**

**RENUNCIATION OF CRIMINAL PURPOSE**

**[To be used when the defendant's conduct would otherwise constitute an attempt under Section 2 or 3 above]**

As part of the defendant's denial of guilt, the defendant raised the defense of renunciation of criminal purpose.

The accused must prove, by a preponderance of the evidence, that (he/she) abandoned (his/her) effort to commit the crime or otherwise prevented its commission under circumstances that show a complete and voluntary decision to renounce (his/her) criminal purpose. The abandonment of the criminal effort must begin with the defendant and not be forced upon (him/her) by some outside event, such as police intervention.<sup>6</sup> Renunciation of criminal purpose is not voluntary if the reason for it is that it seems more

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<sup>6</sup> Code Commentary at 124.

**CORRUPTING OR INFLUENCING A JURY**

**(N.J.S.A. 2C:29-8)**

**Page 7 of 9**

likely that defendant will be detected or caught, or the objective seems more difficult than it did at the beginning of the course of conduct. Renunciation is not complete if the defendant only decides to postpone the criminal conduct to a better time or to focus on another but similar objective or victim. If mere abandonment of the criminal effort is not enough to prevent the offense, then the defendant must have taken further and affirmative steps that actually prevented the commission of the offense.<sup>7</sup>

As I stated, the defendant must prove renunciation by a preponderance of the evidence. I previously explained that the State has the burden of proving every element of the crime(s) charged beyond a reasonable doubt. The burden of proving renunciation by a preponderance of the evidence is a lesser burden. It simply means that the defendant has the burden of establishing that the evidence supporting renunciation is more likely true than not. Another way to describe it is the greater weight of the believable evidence in the case. It does not necessarily mean the evidence of the greater number of witnesses, but rather, the evidence that carries the greater convincing power in your minds. I remind you, however, that the burden of proving every element of the attempt to commit corrupting or influencing a jury as I have previously defined it is always on the State and never on the defendant.

If you find that the State has failed to prove any one of these elements beyond a reasonable doubt, then you must find the defendant not guilty of an attempt to commit corrupting or influencing a jury. Also, if you find the State has proven each of these elements beyond a reasonable doubt, but that the defendant has established by a preponderance of the evidence that (he/she) renounced (his/her) criminal purpose, then you must find the defendant not guilty. However, if you find that the State has proven each of these elements beyond a reasonable doubt and the defendant has failed to establish renunciation by a preponderance of the evidence, then you must find the defendant guilty of attempting to corrupt or influence a jury.

**(Charge in All Cases)**

If you find that the State has not proven any of the elements of the crime charged beyond a reasonable doubt, you must find the defendant not guilty.

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<sup>7</sup> Id. at 125.

**CORRUPTING OR INFLUENCING A JURY**

**(N.J.S.A. 2C:29-8)**

**Page 8 of 9**

If you find that the State has proven all of the required elements beyond a reasonable doubt, then you must find the defendant guilty.

**(Charge as Appropriate)**

If you have found the defendant guilty beyond a reasonable doubt of corrupting or influencing a jury, or of attempting to corrupt or influence a jury, then you must go on with your deliberations and determine whether the State has proven beyond a reasonable doubt that the defendant employed force or the threat of force in the course of committing the crime.

Use of force or threat of force means to employ or threaten to employ the exercise of strength or power against another. That force need not entail pain or bodily harm and need not leave any mark.<sup>8</sup>

If you find that the State has not proven beyond a reasonable doubt the additional element that the defendant used or threatened the use of force, then you must find the defendant guilty only of corrupting or influencing a jury [or attempting to corrupt or influence a jury].

If you find that the State has proven beyond a reasonable doubt the additional element that the defendant used or threatened the use of force, then you must go on with your deliberations and determine whether the defendant employed force or the threat of force in connection with an official proceeding involving any of the following crimes:

**(Choose Appropriate)**

- (1) Murder (2C:11-3);
- (2) Aggravated manslaughter or manslaughter (2C:11-4);
- (3) Vehicular homicide (2C:11-5);
- (4) Aggravated assault (subsection b. of 2C:12-1);
- (5) Disarming a law enforcement officer (subsection b. of 2C:12-11);
- (6) Kidnapping (2C:13-1);
- (7) Aggravated sexual assault (subsection a. of 2C:14-2);
- (8) Sexual assault (subsection b. and paragraph 1 of subsection c. of 2C:14-2);
- (9) Robbery (2C:15-1);
- (10) Carjacking (section 1 of 2C:15-2);
- (11) Aggravated arson (paragraph 1 of subsection a. of 2C:17-1);
- (12) Burglary (2C:18-2);

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<sup>8</sup> State v. Brannon, 178 N.J. 500, 504 and 510 (2004).



**CORRUPTING OR INFLUENCING A JURY**

**(N.J.S.A. 2C:29-8)**

**Page 9 of 9**

- (13) Extortion (subsection a. of 2C:20-5);
- (14) Booby traps in manufacturing or distribution facilities (subsection b. of 2C:35-4.1);
- (15) Strict liability for drug induced deaths (2C:35-9);
- (16) Terrorism (section 2 of 2C:38-2);
- (17) Producing or possessing chemical weapons, biological agents or nuclear or radiological devices (section 3 of 2C:38-3); and
- (18) First degree racketeering (2C:41-2).

The term “official proceeding” includes any type of proceeding where the taking of testimony under oath is authorized.<sup>9</sup>

If you find that the State has failed to prove beyond a reasonable doubt that the defendant’s use or threat to use force occurred in connection with an official proceeding involving one of the previously enumerated crimes, then you must find defendant guilty only of corrupting or influencing a jury by the use or threatened use of force.

On the other hand, if you find that the State has proven beyond a reasonable doubt that the defendant used or threatened to use force in connection with an official proceeding involving one of the previously enumerated crimes, then you must find the defendant guilty of this charge.<sup>10</sup>

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<sup>9</sup> See N.J.S.A. 2C:27-1d.

<sup>10</sup> In sum, there are seven possible verdicts for the jury’s consideration: (1) not guilty; (2) guilty of third-degree corrupting or influencing a jury; (3) guilty of attempted third-degree corrupting or influencing a jury; (4) guilty of second-degree corrupting or influencing a jury while employing the use or threat to use force; (5) guilty of attempted second-degree corrupting or influencing a jury while employing the use or threat to use force; (6) guilty of first-degree corrupting or influencing a jury while employing the use or threat to use force in connection with an official proceeding involving any of the enumerated crimes; and (7) guilty of attempted first-degree corrupting or influencing a jury while employing the use or threat to use force in connection with an official proceeding involving any of the enumerated crimes.