

PATTERN OF OFFICIAL MISCONDUCT
(N.J.S.A. 2C:30-7)

Count _____ of the Indictment charges the defendant with the crime of a "Pattern of Official Misconduct." **[Read count of the Indictment.]** The statute upon which this charge is based reads as follows:

A person commits the crime of pattern of official misconduct if he (or she) commits two or more acts that violate the provisions of [choose appropriate:] N.J.S.A. 2C:30-2 or N.J.S.A. 2C:30-6.

In order to convict the defendant of this charge, the State must prove the following elements beyond a reasonable doubt:

1. That the defendant knowingly committed two or more acts¹;
2. That the two or more acts the defendant committed violated the provisions of [choose appropriate:] N.J.S.A. 2C:30-2 (Official Misconduct) or N.J.S.A. 2C:30-6 (Official Deprivation of Civil Rights).

The first element the State must prove beyond a reasonable doubt is that the defendant knowingly committed two or more acts. [State the two or more acts alleged by the State which constitute this charge. (Charge if appropriate: The defense asserts _____.)].

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 the high probability of their existence. A person acts knowingly as to a result of 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 conduct, words or acts. Therefore, it is not necessary for the State to produce witnesses to testify that particular defendant stated, for example, that he acted with knowledge

¹ The Model Jury Charge Committee agrees that a knowing state of mind is applicable to the conduct in this element. N.J.S.A. 2C:2-2c(3). The Committee, however, wishes to alert the court and counsel that there may be a question whether knowingly also modifies the number of acts alleged to have been committed.

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when he had dominion and control over a particular thing. It is within your power to find that proof of knowledge has been furnished beyond a reasonable doubt by inference which may arise from the nature of the acts and the surrounding circumstances.

The second element which the State must prove beyond a reasonable doubt is that the two or more acts the defendant committed violated the provisions of [choose appropriate:] N.J.S.A. 2C:30-2 (Official Misconduct) [or] N.J.S.A. 2C:30-6 (Official Deprivation of Civil Rights).

[Choose appropriate paragraphs]

I have already instructed you on the crime of N.J.S.A. 2C:30-2 (Official Misconduct) or N.J.S.A. 2C:30-6 (Official Deprivation of Civil Rights).² Even though you may have already considered that crime [those crimes] as part of your deliberations under count[s] _____ of the indictment, you must now again decide if the State has proven that crime [those crimes] with proof beyond a reasonable doubt in order for the State to meet its burden of proof for this charge.

It is not a defense to this charge that the violations were not part of a common plan or scheme or did not have similar methods of commission.

If you find that the State has failed to prove beyond a reasonable doubt either of these two elements, then you must find the defendant not guilty. If, on the other hand, you find that the State has proven each of these two elements beyond a reasonable doubt, then you must find the defendant guilty.

[Charge if second-degree Pattern of Official Misconduct is alleged]

Furthermore, if you find that the State has proven beyond a reasonable doubt that the defendant is guilty of a Pattern of Official Misconduct, then you must consider if the State has

² In the unlikely event that the State has not charged the defendant with the underlying crimes of either N.J.S.A. 2C:30-2 (Official Misconduct) or N.J.S.A. 2C:30-6 (Deprivation of Civil Rights), then the court must instruct the jury on these underlying crimes (whichever is alleged in the indictment) by giving the appropriate model jury charge(s) at this point in this charge.

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proven beyond a reasonable doubt that one of the acts committed was a first or second degree crime.

[Choose appropriate paragraphs]

[N.J.S.A. 2C:30-2 – Official Misconduct – second degree]

A section of our statutes provides that a Pattern of Official Misconduct is a crime of the third-degree, except that it is a crime of the second-degree if one of the acts committed is a first or second degree crime. I have already charged you on the crime of Official Misconduct, N.J.S.A. 2C:30-2. If the State has proven each element of this crime beyond a reasonable doubt and in so doing, has proven each element of N.J.S.A. 2C:30-2 (Official Misconduct) beyond a reasonable doubt, you must determine the fair market value of the benefit involved. The State must prove beyond a reasonable doubt that the value of the benefit involved [If appropriate add: for each specific instance concerning which you have reached a verdict of guilty] exceeds \$200.

(OR)

[N.J.S.A. 2C:30-6 – Official Deprivation of Civil Rights³]

A section of our statutes provides that a Pattern of Official Misconduct is a crime of the third-degree, except that it is a crime of the second-degree if one of the acts committed is a first or second degree crime. I have already charged you on the crime of Official Deprivation of Civil Rights. If the State has proven each element of this crime beyond a reasonable doubt and in so doing, has proven each element of N.J.S.A. 2C:30-6 (Official Deprivation of Civil Rights) beyond a reasonable doubt, you must determine if the State has proven beyond a reasonable doubt that bodily injury has resulted from depriving a person of a right or a privilege in violation of the crime of N.J.S.A. 2C:30-6 (Official Deprivation of Civil Rights). If so, the State has proven the second-degree crime of Official Deprivation of Civil Rights.

³

N.J.S.A. 2C:30-6b (2).

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Bodily injury means physical pain, illness or any impairment of physical condition.⁴

The State must also prove beyond a reasonable doubt that the bodily injury has resulted from depriving a person of privilege in violation of N.J.S.A. 2C:30-6 (Official Deprivation of Civil Rights).

If the State has proven these two additional elements beyond a reasonable doubt, then you must find that bodily injury has resulted from depriving a person of a right or a privilege in violation of the crime of second-degree N.J.S.A. 2C:30-6 (Official Deprivation of Civil Rights). If the State has failed to prove either of these two additional elements beyond a reasonable doubt, then you must find that no bodily injury has resulted from depriving a person of a privilege in violation of N.J.S.A. 2C:30-6 (Official Deprivation of Civil Rights).

(OR)

[N.J.S.A. 2C:30-6b (3)]

If the State has proven each element of this crime beyond a reasonable doubt and in so doing, has proven each element of N.J.S.A. 2C:30-6 (Official Deprivation of Civil Rights) beyond a reasonable doubt, you must determine if the State has proven beyond a reasonable doubt that during the course of violating the provision of N.J.S.A. 2C:30-6 (Official Deprivation of Civil Rights), a public servant committed or attempted to commit or conspired to commit [choose appropriate:] murder, manslaughter, kidnapping or aggravated sexual assault [read in all situations:] against a person who is being deprived of a right or privilege in violation of N.J.S.A. 2C:30-6 (Official Deprivation of Civil Rights).⁵ If so, the State has proven the first-degree crime of Official Deprivation of Civil Rights in violation of N.J.S.A. 2C:30-6b(3) and therefore has

⁴ N.J.S.A. 2C:11-1 (a).

⁵ Depending on what is alleged by the State in the indictment, the court must also charge the underlying predicate crime(s). If an attempt is also alleged, then the attempt charge with the purposeful mental state must be charged. See N.J.S.A. 2C:5-1a. If the State alleges a conspiracy, then the Conspiracy charge must also be given. See N.J.S.A. 2C:5-2.

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violated the second-degree crime of Pattern of Official Misconduct (N.J.S.A. 2C:30-7b) [the charge which you are considering at this point].

A public servant means any officer or employee of government including legislators and judges, and any person participating as juror, advisor, and consultant or otherwise, in performing governmental function, but the term does not include witnesses.

Government includes any branch, subdivision or agency of the government of the State or any locality within it. ⁶

If you have found that the State has proven each of these additional elements beyond a reasonable doubt, then you must find that the defendant is guilty of the second-degree crime of Pattern of Official Misconduct by being a public servant who has committed or attempted to commit or conspired to commit [choose appropriate:] murder, manslaughter, kidnapping or aggravated sexual assault [read in all situations:] against a person who is being deprived of a right or privilege in violation of first-degree N.J.S.A. 2C:30-6 (Official Deprivation of Civil Rights). If, on the other hand, you find that the State has failed to prove any of these additional elements beyond a reasonable doubt, then you must find the defendant not guilty of [the second-degree crime of Pattern of Official Misconduct in violation of N.J.S.A. 2C:30-7b] [or] [choose appropriate:] committed or attempted to commit or conspired to commit [choose appropriate:] murder, manslaughter, kidnapping or aggravated sexual assault [read in all situations:] against a person who is being deprived of a right or privilege in violation of N.J.S.A. 2C:30-6 (Official Deprivation of Civil Rights).

In summary, if you find that the State has failed to prove any of the elements of the crime of Pattern of Official Misconduct, then you must find the defendant not guilty. If you find that the State has proven beyond a reasonable doubt all of the elements of the crime of Pattern of Official Misconduct but has failed to prove that one of the acts committed is a first or second

⁶ N.J.S.A. 2C:27-1b.

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degree crime then you must find the defendant guilty of Pattern of Official Misconduct in the third degree. If you find that the State has proven beyond a reasonable doubt all of the elements of the crime of Pattern of Official Misconduct and also has proven beyond a reasonable doubt that one of the acts committed is a first or second degree crime, then you must find the defendant guilty of a second degree Pattern of Official Misconduct.