

CRIME OF OFFICIAL DEPRIVATION OF CIVIL RIGHTS
(N.J.S.A. 2C:30-6)

Count _____ of the indictment charges the defendant with the Crime of Official Deprivation of Civil Rights. **[Read count of the Indictment.]** The statute upon which this charge is based reads as follows:

A public servant acting or purporting to act in an official capacity commits the crime of official deprivation of civil rights if, knowing that his conduct is unlawful, and acting with the purpose to intimidate or discriminate against an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity, the public servant: (1) subjects another to unlawful arrest or detention, including, but not limited to, motor vehicle investigative stops, search, seizure, dispossession, assessment, lien or other infringement of personal or property rights; or (2) denies or impedes another in the lawful exercise or enjoyment of any right, privilege, power or immunity.

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

1. That the defendant was a public servant;
2. That the defendant knowingly acted or purported to act in an official capacity;
3. That the defendant knew that his/her conduct was unlawful;
4. That the defendant acted with the purpose to intimidate or discriminate against an individual or group of individuals because of [choose appropriate category] race, color, religion, gender, handicap, sexual orientation or ethnicity, and;

[Choose appropriate section]

- 5(1). That the defendant subjected another to unlawful arrest or detention, including but not limited to, motor vehicle investigative stops, search, seizure, dispossession, assessment, lien or other infringement of personal or property rights;

[or]

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5(2). That the defendant denied or impeded another in the lawful exercise or enjoyment of any right, privilege, power or immunity.

[Resume full charge]

The first element the State must prove beyond a reasonable doubt is that the defendant was a public servant at the relevant time(s). A public servant means any officer or employee of government including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function, but the term does not include witnesses.¹ Here the State alleges _____. [Charge if the defendant requests:] The defendant counters as follows: _____.

The second element the State must prove beyond a reasonable doubt is that the defendant knowingly acted or purported to act in an official capacity. The act must relate to the public servant's office.

The third element the State must prove beyond a reasonable doubt is that the defendant knew his/her conduct was unlawful.

For purposes of this section, an act is unlawful if it violates the Constitution of the United States, or the Constitution of this State, or if it constitutes a criminal offense under the laws of this State.²

The fourth element the State must prove beyond a reasonable doubt is that the defendant acted with the purpose to intimidate or discriminate against an individual or group of individuals because of [choose appropriate category] race, color, religion, gender³, handicap⁴, sexual

¹ N.J.S.A. 2C:27-1g.

² N.J.S.A. 2C:30-6e.

³ The Committee notes that gender identity or expression means having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person's assigned sex at birth. See N.J.S.A. 2C:16-1g.

⁴ The term 'disability' has replaced the term 'handicap.' See N.J.S.A. 2C:16-1a (the bias intimidation charge specifically defines disability); State v. Dixon, 396 N.J. Super. 329, 338-40 (App. Div. 2007)('disability' has replaced the term 'handicap').

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orientation or ethnicity. To intimidate means to put another person in fear. [Charge if appropriate]: When the actual victim is one other than the intended victim, it is immaterial that the actual victim was not the intended victim.⁵

[If the category includes ‘handicap’, consider using the following definition of ‘disability:’

“Disability” means physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental, psychological, or developmental disability, including autism spectrum disorders, resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques.
“Disability” shall also mean AIDS or HIV infection.⁶

[Continue with full charge]

A person acts purposely with respect to the nature of his/her conduct or a result of his/her conduct if it is the person’s 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 the person is aware of the existence of such circumstances or believes or hopes that they exist. “With purpose,” “designed,” “with design,” or equivalent terms have the same meaning.

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 if he/she is aware of a high probability of their existence. A person acts knowingly with respect to the result of his/her conduct if he/she is aware that it is practically certain that his/her

⁵ See N.J.S.A. 2C:2-3d.

⁶ State v. Dixon, 396 N.J. Super. at 339. See note 4, supra. See also N.J.S.A. 10:5-5q.

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conduct will cause such a result. “Knowing,” “with knowledge,” or equivalent terms have the same meaning.

Purpose and knowledge refer to conditions of the mind. They cannot be seen. Often, they can be determined only by inferences from conduct, words or acts. It is not necessary, for the State to prove the existence of such a mental state by direct evidence such as a statement by the defendant that he/she had a particular purpose or that he/she acted with knowledge when he/she had dominion and control over a particular thing. It is within your power to find that proof of a state of mind has been furnished beyond a reasonable doubt by inferences which may arise from the nature of the acts and the surrounding circumstances. The defendant’s conduct and everything done or said by him/her preceding, connected with, and immediately succeeding the alleged acts are among the circumstances to be considered.

[Choose appropriate sections]

The fifth element the State must prove beyond a reasonable doubt is that the defendant subjected [the victim(s)] to [choose appropriate:] [unlawful arrest] or [detention,] including but not limited to [choose appropriate categories:] [motor vehicle investigative stops,] [search,] [seizure,] [dispossession,] [assessment,] [lien] or [other infringement of personal or property rights].

[or]

The fifth element the State must prove beyond a reasonable doubt is that the defendant denied or impeded [the victim(s)] in the lawful exercise or enjoyment of any [choose appropriate:] [right,] [privilege,] [power] or [immunity].

[Charge in all cases]

Here the State alleges _____. [Charge if the defendant requests:] The defendant counters as follows: _____.

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[Charge where appropriate]

Proof that a public servant made [choose appropriate:]

- i) a false statement,
- ii) prepared a false report,
- iii) or, if the agency that employs the public servant, the Attorney General or the county prosecutor having supervisory authority over the agency required a report to be prepared, failed to prepare a report concerning the conduct that is the subject of the prosecution,

may give rise to an inference that the actor [the defendant] knew his/her conduct was unlawful.⁷

An inference is a deduction of fact which may be drawn logically and reasonably from another fact or group of facts established by the evidence. Whether or not the inference relating to [the defendant's] state of mind should be drawn is for you to decide, using your own common sense, knowledge and everyday experience, after you consider whether it is probable, logical, and reasonable to draw such an inference. As judges of the facts, you decide whether the facts and circumstances reflected in the evidence support any inference. You are always free to draw, or to reject, any inference.

If you decide to draw this particular inference as to the purpose of (the defendant), weigh it in connection with all other evidence that you have seen and heard. Drawing an inference does not reduce or lessen the burden of proof imposed upon the State. The State must prove each element of each offense beyond a reasonable doubt.

[Charge in all cases]

If you find that the State has failed to prove any of these elements beyond a reasonable doubt, then you must find the defendant not guilty. If, however, you find that the State has

⁷ N.J.S.A. 2C: 30-6d.

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proven each and every one of these elements beyond a reasonable doubt, then you must find the defendant guilty.

[If the State charges a crime of the second degree, charge the following]

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

Furthermore, if you find that the State has proven the defendant guilty of the Crime of Official Deprivation of Civil Rights, you must then consider if bodily injury resulted from depriving a person of a right or privilege in violation of this section. A section of the statutes provides that the Crime of Official Deprivation of Civil Rights is a crime of the third degree. However, if the State proves two additional elements beyond a reasonable doubt then the crime is one of second degree.

First, the State must prove beyond a reasonable doubt that the victim suffered bodily injury.

Bodily injury means physical pain, illness or any impairment of physical condition.⁸

Second, the State must prove beyond a reasonable doubt that the bodily injury suffered by the victim resulted from depriving the victim of a right or a privilege.⁹

If the State has proven each of these two additional elements of this crime beyond a reasonable doubt, then you must find the defendant guilty of the second-degree Crime of Official Deprivation of Civil Rights. If, on the other hand, the State has failed to prove either of these two additional elements beyond a reasonable doubt, then you must find the defendant not guilty of the second-degree Crime of Official Deprivation of Civil Rights but guilty of third-degree Official Deprivation of Civil Rights.

[Or]

[If the State charges a crime of the first-degree, charge the following]

[N.J.S.A. 2C:30-6c - First Degree]

⁸ N.J.S.A. 2C:11-1(a).

⁹ If causation is an issue, charge pursuant to N.J.S.A. 2C:2-3.

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Furthermore, if you find that the State has proven the defendant guilty of the Crime of Official Deprivation of Civil Rights, you must then consider if, during the course of violating the provisions of this section, a public servant committed or attempted or conspired to commit [choose appropriate:] murder, manslaughter, kidnapping or aggravated sexual assault against a person who is being deprived of a right or privilege in violation of this section. A section of the statutes provides that the Crime of Official Deprivation of Civil Rights is a crime of the third degree. However, if the State proves two additional elements beyond a reasonable doubt then the crime is one of the first degree.

First, the State must prove beyond a reasonable doubt that the defendant committed or attempted¹⁰ to commit or conspired¹¹ to commit [choose appropriate¹²:] murder, manslaughter, kidnapping or aggravated sexual assault.

Second, the State must prove beyond a reasonable doubt that the defendant committed this act or attempted it or conspired to commit it during the course of violating the provisions of the Crime of Official Deprivation of Civil Rights.¹³

If you find that the State has proven each of these two additional elements beyond a reasonable doubt, then you must find the defendant guilty of the first-degree Crime of Official Deprivation of Civil Rights. If, on the other hand, you find that the State has failed to prove either of these two additional elements beyond a reasonable doubt, then you must find the defendant not guilty of the first-degree Crime of Official Deprivation of Civil Rights but guilty of third-degree Official Deprivation of Civil Rights.

¹⁰ See N.J.S.A. 2C:5-1a.

¹¹ See N.J.S.A. 2C:5-2.

¹² Charge appropriate predicate crime as alleged in the indictment.

¹³ If causation is an issue, charge pursuant to N.J.S.A. 2C:2-3.