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Integrity Crimes and Civil Liability Issues



Integrity Crimes and Civil Liability Issues

~ CHAPTER 34 ~

Topics and concepts included in this chapter:

1. The terms "benefit" and "public servant".
2. Penal Law offenses pertaining to bribery and bribe receiving.
3. Penal Law offenses pertaining to official misconduct, rewarding official misconduct, and receiving reward for official misconduct.
4. Penal Law offenses pertaining to giving and receiving unlawful gratuities.
5. The provisions of New York State General Municipal Law, Section 50-K, which offers protection to police officers from civil liability.
6. Guidelines for off-duty conduct by a police officer regarding protection from civil liability.
7. The Whistleblowers Law.

Mandatory Patrol Guide Procedures

Arrests

P.G. 208-34	Bribery Arrest by Uniformed Members of the Service
P.G. 208-35	Attempted Bribery of Uniformed Member of the Service

Court and Agency Appearances

P.G. 211-21	Obtaining Assistance of Corporation Counsel
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Mandatory Legal Bureau Bulletin

Vol. 1, No. 19, "BRIBERY," Penal Law sections 10.00 (17) and 200.00.



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This chapter discusses the Penal Law offenses that deal with issues of integrity, including bribery, bribe receiving, and official misconduct. The mere perception by the public that police officers are being dishonest or failing to perform their lawful duties hurts the entire Department, because it breaks down the community's trust in us.

DEFINITIONS OF TERMS

Benefit (P.L. 10.00 subd. 17)

Any gain or advantage to the beneficiary (person receiving the benefit), including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary. It is not necessarily limited to money.

Public Servant (P.L. 10.00 subd. 15)

1. Any public officer or employee of the State of New York or of any political subdivision thereof or of any governmental agency within the State; or
2. Any person exercising the functions of any public officer or employee. The term "public servant" includes a person who has been elected, hired or appointed as a public servant in New York State, and includes a person who has been elected or designated to become a public servant and who has not yet taken that position. Examples of public servants include: the Mayor, police officers, city marshals, city emergency medical service workers, city health inspectors, district attorneys, assistant district attorneys, public school teachers, traffic enforcement agents, doctors or nurses employed by a municipal hospital.

Note: Only employees of New York State or its subdivisions are *public servants* according to the N.Y.S. Penal Law definition. Federal employees, such as mail carriers, FBI agents, DEA agents, and the like are not included in this definition. Instead, they are covered under federal law. Employees of other states or employees of counties, or cities of other states, would be covered under the laws of those states.

Bribery – Felony (P.L. 200.00, 200.03, 200.04)

In order to commit the crime of bribery, the bribe giver (briber) offers or gives a benefit in an attempt to influence a public servant's present or future conduct, thereby bypassing the orderly processes of the government. The briber, in effect, attempts to "buy" preferential status or treatment from the government.

An important fact to remember, as you read the following definition and examples of bribery, is that there is no such crime as *attempted bribery*. This is so because *bribery occurs when an offer is made*: the law does not require that the benefit actually be handed over to the public servant.



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A person is guilty of bribery when:

1. He or she confers or offers or agrees to confer;
2. Any benefit upon a public servant;
3. Upon an agreement or understanding;
4. That such public servant's vote, opinion, judgment, action, decision or exercise of discretion, as a public servant will be thereby influenced.

The benefit used in this offense does not have to go directly to the public servant. It includes a benefit to a **third person** or to any person or thing in whose welfare the beneficiary is interested.

Example: Mr. Brown offers Mr. Smith, an assistant district attorney, a discount on a new automobile if he refuses to prosecute him. The benefit offered in this case is "a discount on a car."

Note: The benefit never has to change hands. As long as there is an agreement or understanding, the attempt of bribery or a related offense constitutes the offense.

Note: The penalty for the offense of bribery increases when the conduct involves either benefits valued in excess of \$10,000 or class "A" felonies involving controlled substances (P.L. Article 220).

Bribery of a public servant is a very serious crime and is always a felony. To complete the crime of bribery there must be three (3) basic elements:

1. There must be a "benefit."
2. A "public servant" is involved.
3. There must be an agreement or understanding to influence the public servant's present or future conduct as it relates to the public servant's official duties.



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Bribe Receiving – Felony (P.L. 200.10, 200.11, 200.12)

Bribe receiving may be charged when a public servant solicits or accepts a benefit to influence the public servant's present or future conduct. Public confidence in the police must be built on the knowledge that the Department protects the rights of its citizens impartially and professionally. Since the police are viewed as defenders of law and order, discovery of criminal activity within the Department brings about a strong and long lasting backlash of public sentiment.

If you are offered a bribe, notify the desk officer/supervisor **as soon as possible**.

A person is guilty of bribe receiving when:

1. A public servant;
2. Solicits (asks for), accepts, or agrees to accept any benefit from another person;
3. Upon an agreement or understanding;
4. That the public servant's vote, opinion, judgment, action, decision, or exercise of discretion as a public servant, will thereby be influenced.

Notes:

- A public servant can commit bribe receiving by either initiating the crime, by asking for a benefit (money or some gift or service) or by agreeing to accept or accepting a benefit. Therefore, the public servant can be seen as either a "bribe asker" or "bribe taker."
- Sometimes a police officer will take a bribe by agreeing to accept a benefit with no intention of doing anything for the benefit of the bribe giver; remember, **the mere acceptance of the offer constitutes bribe receiving**.
- As in bribery, the seriousness of this crime increases when the incident involves either benefits valued in excess of \$10,000 or class A felonies involving controlled substances (P.L. Article 220).
- A third person acting with the same intent as the public servant can also be charged with bribe receiving through accessorial conduct when that third person accepts or agrees to accept the benefit on behalf of the public servant.
- It does not matter whether the agreement to influence the public servant's action is legal and proper or is unlawful and bad. Once an agreement or understanding is reached by both parties that a benefit will influence the public servant's action, the offenses of bribery (for the bribe giver) and bribe receiving (for the public servant/bribe taker) are complete whether or not the public servant keeps his part of the bargain.



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Example: A police officer observes Mr. Darin break into a store and apprehends him. The officer asks Mr. Darin for \$100 to avoid being arrested. If Mr. Darin agrees, the offenses of bribe receiving on the officer's part and bribery on the civilian's part are completed. It is not important if the officer or civilian fails to keep his part of the deal. Once there is an agreement or understanding between them, the offense of bribe receiving has been completed.

Official Misconduct – Misdemeanor (P.L. 195.00)

Official misconduct is a "catch-all" charge whenever a public servant commits an act, which is an unauthorized exercise of his official function or an omission to act when there is a lawful responsibility to do so. Simply stated, if you see a public servant commit a **bad act** (act of commission or omission), and that **bad act** is related to that public servant's official function, then the appropriate charge is official misconduct. As you have already learned, public servants who solicit, accept, or agree to accept any benefit to influence their present or future conduct may be charged with bribe receiving, but in addition an appropriate charge would be official misconduct.

More specifically, official misconduct is committed by a **public servant** with the intent to obtain a benefit or deprive another person of a benefit:

1. A public servant commits an act (act of commission) relating to the public servant's office knowing it is an unauthorized exercise of his official functions; **or**
2. A public servant **knowingly** does not perform a duty which the public servant has a lawful responsibility to perform (act of omission).

Examples:

- A police officer intentionally searches a person unlawfully for the purpose of arresting him. The unlawful search would be considered an act of commission.
- A police officer fails to make an arrest when he has observed a crime committed, even though the officer knows he should make the arrest (an act of omission).

Under subdivision 1, the act must relate to the public servant's office in that it constitutes an unauthorized exercise of his or her official function.

Subdivision 2 refers to public servants who **knowingly** do not perform an official duty imposed on them by law or which is clearly part of their job. The failure to act must be more than a lack of good judgment. It must be a *knowing* failure, not simply a mistake. The conduct in subdivisions 1 and 2 of the official misconduct statute is not a crime unless it is coupled with **intent to obtain a benefit or deprive a person of a benefit**.



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The term "benefit" also includes any gain or advantage to a third person. In this crime, even though the intent may be to obtain a benefit, there need be no active solicitation, acceptance or agreement by the public servant.

Example: Officer Norton is walking his foot post when he observes John, a known drug dealer, and another man exchange U.S. currency for two vials of crack. Officer Norton has a party to attend that night and does not wish to make an arrest and spend hours in court. Officer Norton approaches the two men, takes the two vials of crack, throws the crack down the sewer and continues walking his beat. Officer Norton was under a duty to arrest the suspects and invoice the drugs properly, but instead breached his duty. Officer Norton would be guilty of official misconduct - misdemeanor.

Rewarding Official Misconduct – Felony (P.L. 200.20, 200.22)

This crime is committed by **anyone** who knowingly confers, or offers or agrees to confer, any benefit upon public servants for having violated their duty as public servants. This crime is one in which the public servant violates their duty (a past bad act) and has received no offer or benefit nor had they agreed to a benefit prior to their act.

Note: The seriousness of rewarding official misconduct increases when it involves a class A felony in Article 220 (controlled substances) of the Penal Law.

Example: In the example of official misconduct, Officer Norton failed to take appropriate police action. The next day the drug dealer, John, walks up to Officer Norton and states, "Thanks for not arresting me yesterday," and slips a \$50 bill into Officer Norton's hand. John may be charged with rewarding official misconduct. John gave the \$50 bill to Officer Norton for having violated his police duties, namely not making the arrest and not invoicing the recovered drugs properly.

Receiving Reward for Official Misconduct – Felony (P.L. 200.25, 200.27)

This crime is committed by **public servants** when they solicit, accept or agree to accept any benefit from other persons for having violated their duty as public servants. This crime also requires that the public servants have already violated their duty (a past bad act) and that up to the time of such violation there was no solicitation or agreement to give a benefit for their action.

Note: The seriousness of the crime of rewarding official misconduct increases when it involves a class "A" felony in 220 (controlled substances) of the Penal Law.

Example: Referring to the example of official misconduct and rewarding official misconduct, if Officer Norton accepts the money offered by John the drug dealer,



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Officer Norton may be charged with receiving reward for official misconduct. Officer Norton accepted the money for having violated his police duties, namely not making the arrest and not invoicing the recovered drugs properly.

Giving Unlawful Gratuities – Misdemeanor (P.L. 200.30)

This crime is committed when a **person** knowingly gives or attempts to give, or offers any benefit to public servants who have done their job properly (a past good act) and for which they were not entitled to extra compensation. It could be considered giving a "tip" to the public servant.

Example: Mr. Jones offers \$100 to firemen who put out a fire in his home. He could be charged with giving unlawful gratuities in this case. He voluntarily offered a benefit in return for a job well done.

Receiving Unlawful Gratuities – Misdemeanor (P.L. 200.35)

This crime occurs when **public servants** actively solicit, or accept, or agree to accept any benefit for having performed their duty properly (a past good act).

Example: A police officer heroically saves a child's life. He then accepts a benefit offered to him by the child's grateful father. The police officer could be charged with receiving unlawful gratuities and the father could be charged with giving unlawful gratuities.

The important thing to remember about the crimes of giving unlawful gratuities and receiving unlawful gratuities is that unlike bribery and official misconduct, there is no prior wrongful act required of the public servant. In essence, these crimes involve tips for jobs well done – and tips cannot be part of a public servant's income.

CIVIL LIABILITY OF POLICE OFFICERS

Sometimes a police officer's actions may result in a civil lawsuit not only against the police officer, but also against the City of New York. Lawsuits may be brought for many reasons. Examples of allegations made in lawsuits are as follows:

1. A police officer unnecessarily forced a confrontation with an emotionally disturbed person, antagonizing the emotionally disturbed person into attacking the officer. The officer then shot the emotionally disturbed person.
2. A police officer unlawfully searched an apartment without a search warrant and without being privileged under one of the exceptions to the search warrant requirement to the Fourth Amendment.



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3. A police officer used excessive force while making an arrest.
4. Instead of arresting a domestic violence offender who had assaulted his wife, a police officer sent the offender for a walk. The offender returned home an hour later and killed his wife.

PROTECTION FOR POLICE OFFICERS WHO ARE SUED

Generally, **New York State General Municipal Law, Section 50-K**, indemnifies police officers from civil liability, provided that they act reasonably and within the scope of their employment. Under this section, the City of New York will provide legal counsel and pay any subsequent judgment assessed on the officer and the City.

In order for you to be fully protected in case of a civil lawsuit, you must be aware of these important parts of Section 50-k:

1. The act for which you are sued must have happened:
 - a. While you were acting within the scope of your employment as a police officer;
and
 - b. In the discharge of your duties as a police officer; **and**
 - c. While performing your duties, you were not violating any regulation or rule of the Police Department for which a civil action is being brought forward.
2. The City will not pay any judgment if you **intentionally** did something wrong or acted in a **reckless** manner.
3. Any legal papers served **must be delivered** to the **New York City Corporation Counsel within ten (10) days** along with the **Request for Legal Assistance (PD411-160)** form. (P.G. 211-21, *"Obtaining Assistance of Corporation Counsel,"* states that this is done via your commanding officer).
4. You must cooperate fully with the Corporation Counsel and the Comptroller's Office in defense of the case.
5. If you receive Departmental charges for the act for which you are sued, you must be cleared of these charges first in order to be indemnified by the City.
6. In order to sue the City or an employee of the City, a "Notice of Claim" must be filed with the City of New York **within ninety (90) days** of the incident. However, any action or proceeding must commence within **one (1) year and ninety (90) days** from the incident.



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Delivery of Legal Papers

If you are sued, you must be sure that any legal papers are delivered to the Corporation Counsel. The member concerned will complete “Part A” of the **Request for Legal Assistance** and deliver the “Blue” and “White” copies of this form along with the legal papers to your commanding officer to be forwarded to the Corporation Counsel. You will contact the NYPD Legal Bureau within ten (10) days after the commanding officer has forwarded the **Request for Legal Assistance** form to ensure it has been received.

Notify your commanding officer if the **Request for Legal Assistance** form has not been received by the Legal Bureau. If the Corporation Counsel declines to provide representation in the legal case, the member concerned will contact a private counsel and/or union representation.

Acting Within the Scope of Your Employment and in the Discharge of Your Duties as a Police Officer

While you are a police officer throughout New York State, you are also an employee of the City of New York. If you are **off-duty** and **outside** the City of New York and you take police action that results in a lawsuit against you, the City **may** claim that you were not acting as its employee. It is not within the scope of your employment to act as a police officer off-duty outside the City of New York.

However, you are likely to be indemnified if you make an off-duty arrest in the city except: (a) when you are personally involved, (b) when engaged in off-duty employment, and (c) when enforcing traffic regulations.

If you are **on-duty** and take police action, whether you are in New York City or not, you **will** be protected if you acted properly. You will not receive protection, if your police action involves intentional wrongdoing, a criminal act, a reckless act, or any other act that cannot reasonably be seen as part of your duties as a police officer.

Cooperation with the Corporation Counsel and the Office of the Comptroller of the City of New York

If you wish to be indemnified, you must cooperate with the Corporation Counsel and the Comptroller's Office. It is only proper that as a City employee you assist the City in its defense of the case. If you refuse to cooperate, the City will notify you that they will not provide you with an attorney and will not pay any judgment against you. However, there should be no reason why you would not cooperate.



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How to Protect Yourself and the City of New York from Lawsuits

In order to do a professional job as a police officer, and at the same time protect yourself and the City from judgments in civil lawsuits, you should:

1. Know the principles contained in the United States Constitution and the laws granting rights and privileges to citizens, and always uphold them. The requirements of due process, lawful searches and seizures, and probable cause should be studied and mastered by all police officers.
2. Although you are new to the area of law enforcement and are devoting your entire day to learning, upon graduation, you should keep up with the changes in the law and related procedures. The law is always changing. It is your responsibility to be aware of any changes that affect how your job is done.
3. In addition to formal classes conducted at the Police Academy, all members of the service attend in-service training several times a year as well as instructions at the range and daily roll call command level trainings. In addition, the Police Department publishes Legal Bureau Bulletins, orders, and directives, which tell you of new cases that concern your job. *It is your responsibility to read these publications and to follow their direction when performing your duty.* The Legal Bureau has attorneys who will help clarify the law and answer questions that you may have. If you are in doubt about the law, confer with your supervisor to determine if a consultation with the Legal Bureau is appropriate.
4. Do not be overly concerned about civil lawsuits. Base all actions on the facts and act in good faith and on probable cause.
5. Don't abuse the power or the trust people have for you as a police officer. Always act as a professional.
6. If you act reasonably, Section 50-k fully protects you from any monetary loss.

Civil Liability of Police Officers – On or Off-Duty

How can a police officer be protected from civil liability? Whether on or off-duty a police officer's actions must be within their scope of employment if the officer is to be represented and indemnified. A police officer will be protected from civil liability when making an off-duty arrest, except:

- when personally involved in the incident underlying the arrest,
- when engaged in off-duty employment,
- when enforcing traffic regulations.



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Guidelines for Off-Duty Conduct – Within the City of New York

When off-duty and within the City of New York a police officer should make an arrest ONLY when:

- a. The arresting officer is **not personally involved** in the incident; and
- b. There is an **immediate need** for the prevention of a crime or apprehension of a subject; and
- c. The offense is a **crime** (felony or misdemeanor); and
- d. The arresting officer is **armed**.

Guidelines for Off-Duty Conduct – Outside the City of New York

When off-duty, outside the City of New York, and within the State of New York, a police officer should make an arrest ONLY when:

- a. The arresting officer is **not personally involved** in the incident; and
- b. There is an **immediate need** for the prevention of a crime or apprehension of a subject; and
- c. The offense is a **serious felony involving imminent danger to human life**; and
- d. The arresting officer is **armed**.

Police officers have broad arrest powers throughout New York State whether on or off-duty. The above guidelines are designed to limit off-duty arrests by New York City police officers to those circumstances where an arrest is truly necessary.

When involved in an off-duty incident, follow Department guidelines. If the incident occurs outside the City of New York, usually your responsibility as a police officer is met by calling 911 and alerting local authorities as soon as possible. Even if you are within the city, usually the best response in an off duty incident is to call 911. Making such a notification will satisfy your duty to the public and will protect you from civil liability.



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WHISTLEBLOWERS LAW

During this lesson, we have discussed very important topics regarding our integrity as police officers; more importantly our responsibility to maintain this integrity and image. We should all recognize the importance of reporting corruption in a timely manner in order to prevent its widespread effects. Those officers who witness corruption and report it should be commended for their efforts. However this is not always the case. Officers who have reported acts of misconduct have often been subject to what is known as "Adverse Personnel Action" and have been labeled as "Whistleblowers."

In order to combat this type of retaliation, the Mayor signed a bill on February 18, 2003 amending the NYC Whistleblowers Law. (NYC Administrative Code 12-113) "Adverse Personnel Action" by definition includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space or equipment or other benefit to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

The amendment to the Whistleblowers Law has extended protection beyond the categories of criminal activity and corruption. The law now includes reports against gross mismanagement and abuse of authority. The amendment has also expanded protection to all City agencies, not just those who have heads appointed by the Mayor. Of course the law protects all members of the New York City Police Department. In essence, the law stipulates that if any member of the service reports any act of misconduct there shall be no "Adverse Personnel Action" taken against said member. The amendment also stipulates that anonymity and confidentiality of the reporting member be maintained. Those that do take "Adverse Personnel Action" against a reporting officer are subject to penalties including but not limited to Department dismissal, fines and/or imprisonment.



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CLASS DISCUSSION

1. Officer Jones was served with a summons and complaint on March 10th. He goes on vacation, and delivers the documents to his commanding officer upon his return on March 25th. Is this appropriate?
2. Officer Marshall is being defended by the Corporation Counsel. When requested by the Corporation Counsel to come down for an interview on her regular day off, she refuses. Must she be indemnified?
3. Officer Williams makes an off-duty arrest in Nassau County. Although Officer Williams acted properly, he is later sued for making an illegal arrest. Must he be indemnified?
4. In the situation in Question 3, *may* Officer Williams be indemnified?