

21.12 CORRUPTION BY [HARM] [THREAT OF HARM] AGAINST A PUBLIC SERVANT

§ 838.021, Fla. Stat.

To prove the crime of Corruption by [Harm] [Threat of Harm] Against a Public Servant, the State must prove the following three elements beyond a reasonable doubt:

- 1. (Defendant) unlawfully [harmed] [threatened unlawful harm] to [(victim)] [(victim's) immediate family member] [a person with whose welfare (victim) was interested in].**
- 2. At the time, (victim) was a public servant.**

Give as applicable.

- 3. (Defendant) did so, with the intent or purpose to:**
 - a. influence the performance of any act or omission which the defendant believed to be [or (victim) represented as being,] within the official discretion of (victim), in violation of a public duty, or in performance of a public duty.**
 - b. cause or induce (victim) to [use] [exert] [procure the use or exertion of] any influence [upon] [with] any other public servant regarding any act or omission which the defendant believed to be [or (victim) represented as being,] within the official discretion of (victim), in violation of a public duty, or in performance of a public duty.**

Give if requested and if applicable. § 838.021(2), Fla. Stat.

The State does not have to prove that the public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way, that the public servant had assumed office, that the matter was properly pending before [him] [her] or might by law properly be brought before [him] [her], that the public servant possessed jurisdiction over the matter, or that [his] [her] official action was necessary to achieve the defendant's purpose.

Definitions.

§ 838.014(5), Fla. Stat.

“Harm” means pecuniary or other loss, disadvantage, or injury to the person affected.

§ 838.014(7)(a) Fla. Stat.

“Public servant” means any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee.

Give if applicable. § 838.014(7)(b) and (7)(c), Fla. Stat.

“Public servant” also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function or a candidate for election or appointment to any of these officer positions; or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

Lesser Included Offense

No lesser included offenses have been identified for these offenses. There is no crime of Attempt to Corrupt Public Servant by Threat. *See Pagano v. State*, 387 So. 2d 349 (Fla. 1980).

Unlawfully harming a public servant is a second degree felony. Threatening unlawful harm is a third degree felony. *See* § 838.021(3)(a) and (b), Fla. Stat.

Comment

This instruction was adopted in 2013 [131 So. 3d 720] and amended in 2018.