

CRIMINAL POSSESSION OF FORGERY DEVICES
(D Felony)
(Making or Possessing Device Capable of Use
for Forgery, With Intent to Use)
PENAL LAW 170.40(2)
(Committed on or After September 1, 1967)

The _____ count is Criminal Possession of Forgery Devices.

Under our law, a person is guilty of Criminal Possession of Forgery Devices when, with intent to use or to aid or permit another to use the same for purposes of forgery, he or she makes or possesses any device, apparatus, equipment or article capable of or adaptable to such use.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "intent," "forgery," and "possess."

INTENT means conscious objective or purpose.¹ Thus, a person intends to use, or to aid or permit another to use, a device, apparatus, equipment or article for purposes of forgery when that person's conscious objective or purpose is to do so.

FORGERY occurs when a person falsely makes, completes or alters a written instrument.²

POSSESS means to have physical possession or otherwise

¹See Penal Law §15.05(1).

²See Penal Law §§ 170.00(4),(5), and (6) when there is an issue concerning whether the device is capable or adaptable to use for purposes of forgery.

to exercise dominion or control over tangible property.³

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, the following two elements:

1. That on or about _____ (*date*), in the county of _____ (*county*), the defendant, _____ (*defendant's name*), made or possessed a device, apparatus, equipment, or article capable of forgery, or adaptable to such use; and
2. That the defendant did so with intent to use or to aid or permit another to use the same for purposes of forgery.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Criminal Possession of Forgery Devices as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Criminal Possession of Forgery Devices as charged in the _____ count.

³See Penal Law §10.00(8). Where constructive possession is alleged, insert the appropriate instruction from the "Additional Charges" section at the end of this article.