

CRIMINAL SIMULATION
(A Misdemeanor)
(Knowingly Uttering or Possessing Simulated Object
with Intent to Defraud)
PENAL LAW 170.45(2)
(Committed on or After September 1, 1967)

The _____ count is Criminal Simulation.

Under our law a person is guilty of Criminal Simulation when, with knowledge of its true character and with intent to defraud, he or she utters or possesses an object ¹ which has been made or altered in such manner that it appears to have an antiquity, rarity, source, or authorship, which it does not in fact possess.

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 terms²: "intent", and "possesses."

INTENT means conscious objective or purpose.³ Thus, acts with intent to defraud when that person's conscious objective or purpose is to do so.

POSSESS means to have physical possession or otherwise

¹At this point the statute concludes with the words: "so simulated." Those words are apparently a cross-reference to the words specified in subdivision one of the statute [Penal Law § 170.45(1)] that are set forth in this charge.

²The term "utter" is not defined by statute or in case law. Black's Law Dictionary (7th ed 1999) defines the term as follows:

"1. To say, express, or publish.... 2. To put or send (a document) into circulation; esp., to circulate (a forged note) as if genuine...."
(Examples omitted).

³See Penal Law § 15.05(2).

to exercise dominion and 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, each of the following two elements:

1. That on or about _____ (*date*), in the county of _____ (*county*), the defendant, _____ (*defendant's name*), uttered or possessed a _____ (*name of object*), which had been made or altered in such manner that it appeared to have an antiquity, rarity, source, or authorship, which it did not in fact possess; and
2. That the defendant did so with knowledge of its true character and with intent to defraud.

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 Simulation 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 Simulation as charged in the _____ count.

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