

**MAKING AN APPARENTLY SWORN FALSE STATEMENT
IN THE FIRST DEGREE
Penal Law § 210.40
(Committed on or after Sept. 1, 1967)**

The (*specify*) count is Making an Apparently Sworn False Statement in the First Degree.

Under our law, a person is guilty of Making an Apparently Sworn False Statement in the First Degree¹ when that person subscribes a written instrument knowing that it contains a statement which is in fact false and which he or she does not believe to be true, and he or she intends or believes that such instrument will be uttered or delivered with a jurat affixed thereto, and such instrument is uttered or delivered with a jurat affixed thereto,

and when the written instrument involved is one for which an oath is required by law, and the false statement contained therein is made with intent to mislead a public servant in the performance of his or her official functions, and such false statement is material to the action, proceeding or matter involved.

The following terms used in that definition have a special meaning:

JURAT means a clause wherein an attesting officer certifies, among other matters, that the subscriber has appeared before him and sworn to the truth of the contents thereof.²

The term OATH includes an affirmation and every other mode authorized by law of attesting to the truth of that which is

¹ At this point, the statute states: "when he "commits the crime of making an apparently sworn false statement in the second degree." This charge substitutes for that language the definition of the second-degree crime.

² Penal Law §210.00(7).

stated.³ Under our law, (specify mode) is an authorized mode of attesting to the truth of that which is stated.

NOTE: Add If the term “oath required by law” is not in issue:

Under our law, a (specify) is a written instrument for which an oath is required by law.

NOTE: Add If the term “oath required by law” is in issue:

An affidavit, deposition, or other subscribed written instrument is one for which an OATH IS REQUIRED BY LAW when, absent an oath or swearing thereto, it does not or would not, according to statute or appropriate regulatory provisions, have legal efficacy in a court of law or before any public or governmental body, agency or public servant to whom it is or might be submitted.⁴

INTENT means conscious objective or purpose.⁵ Thus, a person intends that a written instrument be uttered or delivered with a jurat affixed thereto when his or her conscious objective or purpose is that such instrument be uttered or delivered with a jurat affixed to it.

And a person makes a false statement with intent to mislead a public servant in the performance of his or her official functions, when that person's conscious objective and purpose is that the false statement mislead a public servant in the performance of his or her official functions.

PUBLIC SERVANT means any public officer or employee of the state or of any political subdivision thereof or of any governmental instrumentality within the state, or any person exercising the functions of any such public officer or employee.

³ Penal Law § 210.00(1).

⁴ See Penal Law § 210.00(4).

⁵ See Penal Law § 15.05(1).

The term public servant includes a person who has been elected or designated to become a public servant.⁶

A false statement is MATERIAL to an action, proceeding or matter when it reflects on the matter under consideration during the action or proceeding in which it is made, or tends to support and give credit to the witness in respect to a main fact in issue.⁷

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

1. That on or about (date), in the County of (County), the defendant, (defendant's name), subscribed a written instrument which contained a statement that was false;

2. That the defendant did so knowing that the instrument contained a false statement which he/she did not believe to be true;

⁶ See Penal Law §10.00(15).

⁷ See e.g. *People v. Stanard*, 42 N.Y.2d 74, 80 (1977). Depending on the facts of the case, it may be appropriate to adapt the language of materiality utilized by the Court of Appeals in the context of a Grand Jury proceeding; namely, that a false statement is material if it has "the natural effect or tendency to impede, influence or dissuade" the public servant in the performance of his or her official functions in an action, proceeding or matter involved. *People v. Davis*, 53 N.Y.2d 164, 171 (1981). See also *People v Perino*, 19 NY3d 85, 89 (2012) quoting *People v. Davis*, 53 N.Y.2d at 170–171 (1981): "To be material, the statement need not prove directly the fact in issue; it is sufficient if it is 'circumstantially material or tends to support and give credit to the witness in respect to the main fact' ... Thus a statement that 'reflect[s] on the matter under consideration' ... even if only as to the witness' credibility ... is material for purposes of supporting a perjury charge."

3. That the defendant intended or believed that such instrument would be uttered or delivered with a jurat affixed to it;

4. That the instrument was uttered or delivered with a jurat affixed to it;

5. That the written instrument was one for which an oath is required by law;

6. That the defendant made the false statement with intent to mislead a public servant in the performance of his/her official functions; and

7. That the false instrument was material to the to the action, proceeding or matter involved.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.