

FORGERY IN THE THIRD DEGREE
Penal Law § 170.05
(Committed on or after September 1, 1967)¹
(Revised: Jan 2018; Feb 2021, May 2022)²

The (specify) count is Forgery in the Third Degree.

Under our law, a person is guilty of Forgery in the Third Degree when, with the intent to defraud, deceive or injure another he or she falsely makes, completes, or alters a written instrument.

An intent to defraud, deceive, or injure another must include an intent to cause harm to that person.³

The following terms used in that definition have a special meaning⁴ :

INTENT means conscious objective or purpose.⁵ Thus, a person acts with intent to defraud, deceive or injure another, when that person's conscious objective or purpose is to do so.

¹ The definition of “written instrument” was amended by the L. 2021, c. 784 to add the text associated with footnote 7 and that addition applies to an offense committed on or after Dec. 22, 2021.

² The 2018 revision was for the purpose of conforming the instruction to the decision in *Golb v. Attorney General*, 870 F.3d 89 (2d Cir. 2017), by insertion of the third paragraph, which reads: "An intent to defraud, deceive, or injure another must include an intent to cause harm to that person." See also *People v. Golb*, 23 NY3d 455 (2014).

The 2022 revision was for the purpose of conforming this instruction to L. 2021, 784, effective December 22, 2021, which amended the definition of “written instrument” to add the text associated with footnote 7.

³ See footnote (2), paragraph 1.

⁴ Depending on the evidence, it may not be necessary to define all the methods by which a written instrument may be forged.

⁵ See Penal Law §15.05(1). If necessary, an expanded definition of “intent” is available in the section on Instructions of General Applicability under Culpable Mental States.

A WRITTEN INSTRUMENT means any instrument or article [including computer data or a computer program] containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying or recording information, or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.⁶

[On or after Dec. 22, 2021, add *if applicable*: A card provided to a person by a vaccine provider indicating the date a person received a vaccination against COVID-19, the type of vaccine and its lot number, and bearing a government logo or other indication that it is created by a governmental instrumentality, shall be considered a written instrument.⁷]

A written instrument can be either complete or incomplete.

A complete written instrument means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof.⁸

[*Note: Add where appropriate:*

An endorsement, attestation, acknowledgment or other similar signature or statement is deemed both a complete written instrument in itself and a part of the main instrument in which it is contained or to which it attaches.⁹]

An incomplete written instrument means one which contains some matter by the way of content or authentication, but which requires additional matter in order to render it a complete written instrument.¹⁰

⁶ Penal Law §170.00(1).

⁷ *Id.* Added by Laws of 2021, c. 784, effective Dec. 22, 2021.

⁸ Penal Law §170.00(2).

⁹ *Id.*

¹⁰ Penal Law §170.00(3).

A person FALSELY MAKES a written instrument when he or she makes or draws a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker or drawer, but which is not such either because the ostensible maker or drawer is fictitious or because, if real, he or she did not authorize the making or drawing thereof. ¹¹

A person FALSELY COMPLETES a written instrument when, by adding, inserting or changing matter, he or she transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer. ¹²

A person FALSELY ALTERS a written instrument when, without the authority of anyone entitled to grant it, he or she changes a written instrument, whether it be in a complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer. ¹³

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, both of the following two elements:

1. That on or about (date), in the County of (county), the defendant, (defendant's name), falsely made, completed or altered a written instrument; and
2. That the defendant did so with the intent to defraud, deceive, or injure another.

¹¹ Penal Law §170.00(4).

¹² Penal Law §170.00(5).

¹³ Penal Law §170.00(6).

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

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