

**CRIMINAL POSSESSION OF A FORGED INSTRUMENT  
SECOND DEGREE  
(D Felony)  
(Knowingly Uttering or Possessing a Specific Forged  
Instrument  
with Intent to Defraud, etc.)  
PENAL LAW 170.25  
(Committed on or After September 1, 1967)  
(Revised June, 2013)<sup>1</sup>**

The \_\_\_\_\_ count is Criminal Possession of a Forged Instrument in the Second Degree.

Under our law, a person is guilty of Criminal Possession of a Forged Instrument in the Second Degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he or she utters or possesses a forged instrument which is or purports to be, or which is calculated to become or to represent if completed (*specify appropriate instrument as set forth in Penal Law § 170.10*<sup>2</sup>).<sup>3</sup>

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<sup>1</sup> The 2013 revision subdivided the second element, which contained the two culpable mental states of the crime, into two separate elements in order to emphasize that each culpable mental state must be proven beyond a reasonable doubt. (see *People v Bailey*, 13 NY3d 67, 71-72 (2009) ["Knowledge and intent are two separate elements that must each be proven beyond a reasonable doubt by the People. Simply put, drawing the inference of defendant's intent from his knowledge that the bills were counterfeit improperly shifts the burden of proof with respect to intent from the People to the defendant."])

<sup>2</sup> The instruments specified in the respective subdivisions of Penal Law § 170.10 are:

1. A deed, will, codicil, contract, assignment, commercial instrument, credit card, or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status; or
2. A public record, or an instrument filed or required or

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<sup>4</sup>: "intent," "possess," and "forged instrument".

INTENT means conscious objective or purpose. Thus, a person intends to defraud, deceive or injure another when that person's conscious objective or purpose is to do so.<sup>5</sup>

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authorized by law to be filed in or with a public office or public servant; or

3. A written instrument officially issued or created by a public office, public servant or governmental instrumentality; or
4. Part of an issue of tokens, public transportation transfers, certificates or other articles manufactured and designed for use as symbols of value useable in place of money for the purchase of property or services; or
5. A prescription of a duly licensed physician or other person authorized to issue the same for any drug or any instrument or device used in the taking or administering of drugs for which a prescription is required by law.

<sup>3</sup> The statutory definition of this crime refers to the uttering or possession of any forged instrument "of a kind specified in section 170.10." The charge substitutes applicable text from Penal Law § 170.10 for the quoted language.

<sup>4</sup> The term "utter" is not defined by statute or in case law. Black's Law Dictionary (7<sup>th</sup> 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).

<sup>5</sup> See Penal Law § 15.05 (1). An expanded definition of "intent" is available in the section on Instructions of General Applicability under Culpable Mental States.

[ *Note: Add where appropriate.*<sup>6</sup>

Under our law, a person who possesses two or more forged instruments, each of which purports to be a credit card<sup>7</sup> (or a debit card<sup>8</sup>) is presumed to possess the same with knowledge that they are forged and with intent to defraud, deceive or injure another. What this means is that, if the People have proven beyond a reasonable doubt that the defendant possessed two or more forged instruments each of which purports to be a credit card or debit card, then you may, but you are not required to, infer from that fact that the defendant possessed them with knowledge that they were forged and with the intent to defraud, deceive or injure another.]

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>9</sup>

A FORGED INSTRUMENT means a written instrument

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<sup>6</sup> Penal Law § 170.27.

<sup>7</sup> A "credit card" means and includes any credit card, credit plate, charge plate, courtesy card, or other identification card or device issued by a person to another person which may be used to obtain a cash advance or a loan or credit or to purchase or lease property or services on the credit of the issuer or of the holder. Penal Law § 155.00 (7); General Business Law § 511 (1).

<sup>8</sup> While the term "debit card" was added to Penal Law § 170.27 by the Laws of 1987, Chapter 556, effective January 1, 1988, it was not expressly added to Penal Law § 170.10. A "debit card" means a card, plate or other similar device issued by a person to another person which may be used, without a personal identification number, code or similar identification number, code or similar identification, to purchase or lease property or services. A "debit card" does not include a credit card or a check, draft or similar instrument. Penal Law § 155.00 (7-a); General Business Law § 511 (9).

<sup>9</sup> Penal Law § 10.00 (8). If necessary, an expanded definition of "possession" is available in the section on Instructions of General Applicability under Possession.

which has been falsely made, completed or altered.<sup>10</sup> The words "written instrument," "falsely made," "falsely completed," and "falsely altered" used in the definition of "forged instrument" also have their own special meanings.

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.<sup>11</sup>

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.<sup>12</sup>

[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.<sup>13</sup>]

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<sup>10</sup> Penal Law § 170.00 (7). Depending on the evidence, it may not be necessary to define all three of the methods by which a written instrument may be forged.

<sup>11</sup> Penal Law § 170.00 (1).

<sup>12</sup> Penal Law § 170.00 (2).

<sup>13</sup> *Id.*

An incomplete written instrument means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.<sup>14</sup>

A written instrument is falsely made when a person 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.<sup>15</sup>

A written instrument is falsely completed when, by adding, inserting or changing matter, a person 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.<sup>16</sup>

A written instrument is falsely altered when, without the authority of anyone entitled to grant it, a person changes a written instrument, whether it be in a complete or incomplete form, by means 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.<sup>17</sup>

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,

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<sup>14</sup> Penal Law § 170.00 (3).

<sup>15</sup> Penal Law § 170.00 (4).

<sup>16</sup> Penal Law § 170.00 (5).

<sup>17</sup> Penal Law § 170.00 (6).

beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the County of (County), the defendant (defendant's name), uttered or possessed a forged instrument which is or purports to be, or which is calculated to become or to represent if completed (specify appropriate instrument as set forth in Penal Law §170.10); and
2. That the defendant did so with knowledge that it was forged; and
3. That the defendant did so with the intent to defraud, deceive or injure another.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Criminal Possession of a Forged Instrument in the Second Degree as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Criminal Possession of a Forged Instrument in the Second Degree as charged in the \_\_\_\_\_ count.