

CRIMINAL POSSESSION OF A FORGED INSTRUMENT
FIRST DEGREE
(Financial Instrument)
Penal Law § 170.30
(Committed on or after Sept. 1, 1967)¹
(Revised June 2013; Jan. 2018 & May 2022) ²

The (*specify*) count is Criminal Possession of a Forged Instrument in the First Degree.

Under our law, a person is guilty of Criminal Possession of a Forged Instrument in the First 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

1 The definition of “written instrument” was amended by the L. 2021, c. 784 to add the text associated with footnote 11 and that addition applies to an offense committed on or after Dec. 22, 2021.

2 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”).

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 11.

represent if completed³ (*specify appropriate instrument as set forth in Penal Law § 170.15*⁴).

An intent to defraud, deceive, or injure another must include an intent to cause harm to that person.⁵

The following terms used in that definition have a special meaning⁶:

INTENT means conscious objective or purpose. Thus, a person acts with intent to defraud, deceive or injure another when that person's conscious objective or purpose is to do so.⁷

POSSESS means to have physical possession or otherwise

³ At this point the statute continues: "of a kind specified in section 170.15." In lieu of that language, this charge requires insertion of the applicable language from Penal Law § 170.15.

⁴ The instruments specified in the respective subdivisions of Penal Law § 170.15 are:

1. Part of an issue of money, stamps, securities, or other valuable instruments issued by a government or governmental instrumentality; or
2. Part of an issue of stock, bonds, or other instruments representing interests in or claims against a corporate or other organization or its property.

⁵ See footnote (1), paragraph two.

⁶ The 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).

⁷ 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.

to exercise dominion or control over tangible property.⁸

A FORGED INSTRUMENT means a written instrument which has been falsely made, completed or altered.⁹ 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.¹⁰

[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.¹¹]

A written instrument can be either complete or incomplete.

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

⁹ Depending on the evidence, it may not be necessary to define all the methods by which a written instrument may be forged.

¹⁰ Penal Law §170.00(1).

¹¹ *Id.* Added by Laws of 2021, c. 784, effective Dec. 22, 2021.

A complete written instrument means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof.¹²

[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.^{13]}

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.¹⁴

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.¹⁵

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.¹⁶

12 Penal Law §170.00(2).

13 *Id.*

14 Penal Law §170.00(3).

15 Penal Law § 170.00 (4).

16 Penal Law § 170.00 (5).

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 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.¹⁷

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 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 § 170.15);
2. That the defendant did so with knowledge that it was forged; and
3. That the defendant did so with intent to defraud, deceive or injure another.

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.

¹⁷ Penal Law § 170.06 (6).