

**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)**  
**(Revised June, 2013)<sup>1</sup>**

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<sup>2</sup> 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

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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> At 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 (see Penal Law § 170.45 [1]) that are set forth in this charge.

following terms<sup>3</sup>: "intent", and "possesses."

INTENT means conscious objective or purpose. Thus, a person acts with intent to defraud when that person's conscious objective or purpose is to do so.<sup>4</sup>

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>5</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, 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 (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
3. That the defendant did so with the intent to defraud.

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<sup>3</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>4</sup> See Penal Law § 15.05 (1). If necessary, an expanded definition of "intent" is available in the section on General Instructions under Culpable Mental States.

<sup>5</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.

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 Simulation 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 Simulation as charged in the \_\_\_\_\_ count.