

**FRAUDULENT MAKING OF AN ELECTRONIC
ACCESS DEVICE IN THE SECOND DEGREE
(Falsely Making, Completing or Altering
Two or More Devices)
Penal Law § 170.75
(Committed on or After November 1, 1996)
(Revised Dec. 2019)¹**

The (*specify*) count is Fraudulent Making of an Electronic Access Device in the Second Degree.

Under our law, a person is guilty of Fraudulent Making of an Electronic Access Device in the Second Degree when, with intent to defraud, deceive or injure another, he or she falsely makes, completes, or alters, two or more electronic access devices².

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 meaning:

INTENT means conscious objective or purpose.¹ Thus, a person acts with intent to defraud, deceive or injure another when that person's conscious objective or purpose is to defraud, deceive or injure another.

An ELECTRONIC ACCESS DEVICE means a mobile identification number or electronic serial number that can be

¹The 2019 revision was for the purposed of adding the text attached to footnote (3).

²The statute adds at this point: "as that term is defined in subdivision eight of section 170.00 of this article." That definition is set forth below.

³ This sentence was added to accord with *Golb v. Attorney General*, 870 F.3d 89 (2d Cir. 2017). See *People v. Golb*, 23 NY3d 455 (2014).

¹See Penal Law §15.05(1).

used to obtain telephone service.²

A person FALSELY MAKES an electronic access device when he or she makes an electronic access device in its entirety, which purports to be an authentic creation of its ostensible maker but which is not such either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing thereof.³

A person FALSELY COMPLETES an electronic access device when, by adding, inserting or changing matter, he or she transforms an incomplete electronic access device into a complete one, without the authority of anyone entitled to grant it, so that such complete electronic access device appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker.⁴

A person FALSELY ALTERS an electronic access device when, without the authority of anyone entitled to grant it, he or she changes an electronic access device, 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 device in its thus altered form appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker.⁵

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),

²See Penal Law §170.00(8).

³See Penal Law §170.00(4).

⁴See Penal Law §170.00(5).

⁵See Penal Law §170.00(6).

the defendant, (defendant's name), falsely made, completed, or altered two or more electronic access devices; and

2. That the defendant did so with the intent to defraud, deceive or injure another.

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.