

**MISREPRESENTATION BY, OR ON BEHALF OF,  
A CAREGIVER FOR A CHILD OR CHILDREN  
Penal Law § 260.35  
(Committed on or after Oct. 15, 2018)**

The (*specify*) count is Misrepresentation By, or on Behalf Of, a Caregiver for a Child Or Children.

Under our law, a person is guilty of Misrepresentation By, or on Behalf Of, a Caregiver for a Child Or Children when he or she:

intentionally makes a false written statement about himself, herself, or another person while he or she, or such other person, is being considered for employment, or while under employment as a caregiver to a parent or guardian of a child or children, or the agent of a parent or guardian, and

such statement contains a materially false representation regarding the caregiver's background related to the ability to safely care for a child or children, and

a reasonable person would have relied upon such statement in making an employment decision.

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

CAREGIVER means a person employed by or being considered for employment to provide fifteen or more hours of care per week to a child or children in the home of such child or children or in the home of such caregiver.<sup>1</sup>

Intent means conscious objective or purpose. Thus a person INTENTIONALLY makes a false written statement about

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<sup>1</sup> Penal Law 260.35(2). At the end of the statutory definition, it continues: "provided that such term shall not apply to a child day care provider required to be licensed pursuant to the social services law." If the proviso is placed in issue by the defense, it will be necessary to include it in the text of the definition of "caregiver" and in the elements of the crime.

himself, herself, or another person when his or her conscious objective or purpose is to do so.<sup>2</sup>

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following four elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name)<sup>3</sup> made a false written statement about himself/herself, or another person while he/she, or such other person, was being considered for employment, or while under employment as a caregiver to a parent or guardian of a child or children, or the agent of a parent or guardian;
2. That the defendant did so intentionally;
3. That the false written statement contains a materially false representation regarding the caregiver's background related to the ability to safely care for a child or children; and
4. That a reasonable person would have relied upon that statement in making an employment decision.

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.

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<sup>2</sup> See Penal Law § 15.05(1).

<sup>3</sup> When the defendant is charged in whole or in part as an accomplice, Court will add: "personally, or by acting in concert with another person." See Accomplice charge.