

FRAUD

RSA 638:1, I (a): Altering a Writing or Uttering an Altered Writing

The defendant is charged with the crime of forgery. The definition of forgery has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [altered a writing of another person] [uttered an altered writing of another person];
2. The defendant was without authority to do so;
3. The writing was or purported to be [a security, revenue stamp, or any other instrument issued by a government, or any agency thereof] [a check, an issue of stocks, bonds, or any other instrument representing an interest in or a claim against property, or a pecuniary interest in or other claim against any person or enterprise];¹
4. The defendant acted [with purpose to defraud anyone]² [with knowledge that he was facilitating a fraud to be perpetrated by anyone]; and
5. The defendant acted purposely.

Those are the elements of the crime of forgery. Certain words in the definition need to be further defined.

“Writing” means printing or any other method of recording information, checks, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege or identification.

“To utter a writing” means to offer the writing, whether it is accepted or not, with the representation, by words or actions, that the writing is genuine³.

“To defraud” means to deprive a person of property or any interest, estate, or right, by fraud, deceit or artifice⁴.

“Purposely” means [see definition of purposely].

“Knowingly” means [see definition of knowingly]

¹ Narrower definition given here is for class B felonies; broader definition applies to class B misdemeanors. Compare RSA 638:1, III with 638:1, II. *State v. Allegra*, 129 N.H. 720 (1987).

² *State v. DeMatteo*, 134 N.H. 296 (1991) (specific person intended to be defrauded need not be identified)

³ BLACK’S LAW DICTIONARY 1387 (5th ed. 1979)

⁴ BLACK’S LAW DICTIONARY 381 (5th ed. 1979); *see also* Commentary to Model Penal Code §224.1 at 298-99 (“The offense of forgery extends beyond cases of pure pecuniary fraud to protect the integrity of documents generally.”); *State v. Young*, 46 N.H. 266 (1865).

RSA 638:1, I (b): Unaltered Writing Purporting to be the Act of Another

The defendant is charged with the crime of forgery. The definition of forgery has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

DRAFT

1. The defendant [made, completed, executed, authenticated, issued, transferred, published, or, otherwise uttered] any writing;
2. The writing purported to be the act of another person;
3. The writing was or purported to be [a security, revenue stamp, or any other instrument issued by a government, or any agency thereof] or [a check, an issue of stocks, bonds, or any other instrument representing an interest in or a claim against property, or a pecuniary interest in or other claim against any person or enterprise];¹
4. The defendant acted [with purpose to defraud anyone]² or [with knowledge that he was facilitating a fraud to be perpetrated by anyone]. And
5. The defendant acted purposely.

Those are the elements of the crime of forgery. Certain words in the definition need to be further defined.

“Writing” means printing or any other method of recording information, checks, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege or identification.

“To utter a writing” means to offer the writing, whether it is accepted or not, with the representation, by words or actions, that the writing is genuine³.

“To defraud” means to deprive a person of property or any interest, estate, or right, by fraud, deceit or artifice⁴.

“Purposely” means [see definition of purposely].

“Knowingly”[see definition of knowingly]

¹ Narrower definition given here is for class B felonies; broader definition applies to class B misdemeanors. *Compare* RSA 638:1, III with 638:1, II

² *State v. DeMatteo*, 134 N.H. 296 (1991) (specific person intended to be defrauded need not be identified.)

³ BLACK’S LAW DICTIONARY 1387 (5th ed. 1979).

⁴ BLACK’S LAW DICTIONARY 381 (5th ed. 1979); *see also* Commentary to Model Penal Code §224.1 at 298-99 (“The offense of forgery extends beyond cases of pure pecuniary fraud to protect the integrity of documents generally.”); *State v. Young*, 46 N.H. 266 (1865).

RSA 638:1, I (b): Forgery – Unaltered Writing Fraudulent Execution

The defendant is charged with the crime of forgery. The definition of forgery has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [made, completed, executed, authenticated, issued, transferred, published, or, otherwise uttered] any writing;
2. The writing purported to have been executed [at a time, at a place in a numbered sequence] other than was in fact the case;
3. The writing was or purported to be [a security, revenue stamp, or any other instrument issued by a government, or any agency thereof] or [a check, an issue of stocks, bonds, or any other instrument representing an interest in or a claim against property, or a pecuniary interest in or other claim against any person or enterprise];¹
4. The defendant acted [with purpose to defraud anyone]² or [with knowledge that he was facilitating a fraud to be perpetrated by anyone];and
5. The defendant acted purposely.

Those are the elements of the crime of forgery. Certain words in the definition need to be further defined.

“A writing” means printing or any other method of recording information, checks, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege or identification.

“To utter a writing” means to offer the writing, whether it is accepted or not, with the representation, by words or actions, that the writing is genuine³.

“To defraud” means to deprive a person of property or any interest, estate, or right, by fraud, deceit or artifice.⁴

“Purposely” means [see definition of purposely].

“Knowingly” means [see definition of knowingly]

¹ Narrower definition given here is for class B felonies; broader definition applies to class B misdemeanors. Compare RSA 638:1, III with 638:1, II

² *State v. DeMatteo*, 134 N.H. 296 (1991) (specific person intended to be defrauded need not be identified)

³ BLACK’S LAW DICTIONARY 1387 (5th ed. 1979).

⁴ BLACK’S LAW DICTIONARY 381 (5th ed. 1979); see also, COMMENTARY TO MODEL PENAL CODE §224.1 at 298-99 (“The offense of forgery extends beyond cases of pure pecuniary fraud to protect the integrity of documents generally.”); *State v. Young*, 46 N.H. 266 (1865).

RSA 638:1, I (b): Forgery—Fraudulent Copy

The defendant is charged with the crime of forgery. The definition of forgery has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [made, completed, executed, authenticated, issued, transferred, published, or, otherwise uttered] any writing;
2. The writing purported to be a copy of an original when no such original existed;
3. The writing was or purported to be [a security, revenue stamp, or any other instrument issued by a government, or any agency thereof] or [a check, an issue of stocks, bonds, or any other instrument representing an interest in or a claim against property, or a pecuniary interest in or other claim against any person or enterprise]¹;
4. The defendant acted [with purpose to defraud anyone]² or [with knowledge that he was facilitating a fraud to be perpetrated by anyone; and .
5. The defendant acted purposely

Those are the elements of the crime of forgery. Certain words in the definition need to be further defined.

“A writing” means printing or any other method of recording information, checks, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege or identification.

“To utter a writing” means to offer the writing, whether it is accepted or not, with the representation, by words or actions, that the writing is genuine.³

“To defraud” means to deprive a person of property or any interest, estate, or right, by fraud, deceit or artifice.⁴

“Purposely” means [see definition of purposely].

“Knowingly” means [see definition of knowingly]

¹ Narrower definition given here is for class B felonies; broader definition applies to class B misdemeanors. *Compare* RSA 638:1, III with 638:1, II

² *State v. DeMatteo*, 134 N.H. 296 (1991) (specific person intended to be defrauded need not be identified).

³ BLACK’S LAW DICTIONARY 1387 (5th ed. 1979).

⁴ BLACK’S LAW DICTIONARY 381 (5th ed. 1979). *Also see*, Commentary to Model Penal Code §224.1 at 298-99 (“The offense of forgery extends beyond cases of pure pecuniary fraud to protect the integrity of documents generally.”); *State v. Young*, 46 N.H. 266 (1865).

RSA 638:2: Fraudulent Handling of Recordable Writings

The defendant is charged with the crime of fraudulent handling of recordable writings. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [falsified][destroyed][removed][concealed] a writing;
2. The writing was any [will][deed][mortgage][security instrument][other writing] for which the law provides public recording;
3. The defendant acted with a purpose to deceive or injure anyone; and
4. The defendant acted purposely.

Those are the elements of the crime of fraudulent handling of recordable writings. Certain words in the definition need to be further defined.

“Purposely” means [see definition of purposely].

RSA 638:3: Tampering with Public or Private Records

This defendant is charged with the crime of tampering with public or private records. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [falsified][destroyed][removed][concealed] a [public][private] [writing][record];
2. The defendant knew that he had no privilege to do so;
3. The defendant acted [deceive][injure] anyone or to conceal any wrongdoing; and
4. The defendant acted purposely.

Those are the elements of the crime of tampering with public or private records. Certain words in the definition need to be further defined.

“Purposely” means [see definition of purposely].

“Knowingly” means [see definition of knowingly]

RSA 638:4: Issuing Bad Checks (Single check)

The defendant is charged with the crime of issuing a bad check. The definition of this offense has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant {issued or passed} a check for the payment of money; and
2. Payment was refused by the bank¹ on which the check was drawn; and
3. The defendant knew or believed that the check would not be paid by the bank^{2 3}; and
- [4. The face amount of the check[exceeded \$1,000 [class A felony]] [exceeded \$500 [class B felony]]; and
- [4. The defendant had been convicted of an offense under RSA 638:4 within the twelve months preceding the conduct at issue [class A misdemeanor]]; and
5. The defendant acted knowingly.

Those are the elements of the crime of issuing a bad check. Certain words in the definition need to be further defined.

“Knowingly” means.[see definition of knowingly].

¹ Substitution of “bank” for “drawee” appears correct, given that a check is defined as a draft drawn on a bank. U.C.C. art. 3 §104(f)

² Substitution of “bank” for “drawee” appears correct, given that a check is defined as a draft drawn on a bank. U.C.C. art. 3 §104(f).

³ RSA 626:7,II

RSA 638:4: Issuing Bad Checks (Course of conduct)

The defendant is charged with the crime of issuing bad checks. The definition of this offense has six parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

DRAFT

1. The defendant {issued or passed} checks for the payment of money ;and
2. Payment for the checks was refused by the bank¹ on which the check was drawn; and
3. The defendant knew or believed that the checks would not be paid by the bank]; and
4. The defendant {issued or passed} the checks pursuant to one {scheme or course of conduct}; and²
5. The face amount of the checks, totaled together [exceeded \$1,000] [exceeded \$500]; and
6. The defendant acted knowingly.

Those are the elements of the crime of issuing a bad check. Certain words in the definition need to be further defined.

“Knowingly” means.[see definition of knowingly].

¹ Substitution of “bank” for “drawee” appears correct, given that a check is defined as a draft drawn on a bank. U.C.C. art. 3 §104(f).

² RSA 638:4, IV(c). For definitions of scheme or course of conduct, see *State v. O’Flynn*, 126 N.H. 706 (1985); *State v. Weeks*, 137 N.H. 687 (1993).

RSA 638:5: Fraudulent Use of a Credit Card

The defendant is charged with the crime of fraudulent use of a credit card. The definition of this offense has [three][four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant used a credit card to obtain [property] [services];and
2. The card {was stolen or had been revoked or canceled}; and
3. The defendant's use of the card was unauthorized by [the issuer of the card][the person to whom the card was issued]
4. The value of the property or services exceeded \$1,000 [Class A felony] \$500[Class B felony].]

Those are the elements of the crime of fraudulent use of a credit card. Certain words in the definition need to be further defined.

“Credit card” means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

“Purposely” means[see definition of purposely].

“Knowingly” means.[see definition of knowingly].

RSA 638:11: Misapplication of Property (by a fiduciary)

The defendant is charged with the crime of misapplication of property. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. Certain property was entrusted to the defendant as a fiduciary; and
2. The defendant dealt with the property in a manner that constituted a breach of his duty ;and
3. The defendant dealt with the property in a manner that involved a substantial risk of loss [to the owner of the property] [to a person for whose benefit the property was entrusted];¹ and
4. The defendant acted knowingly.

These are the elements of the crime of misapplication of property. Certain words in the definition need to be further defined.

“Fiduciary” means any person carrying on fiduciary functions on behalf of a corporation or other organization that is a fiduciary.

“Property” means anything of value, including real estate, tangible and intangible personal property, captured or domestic animals and birds, written instruments or other writings representing or embodying rights concerning real or personal property, labor services, or otherwise containing any thing or value to the owner, commodities of a public utility nature such as telecommunications, gas, electricity, steam, or water, and trade secrets, meaning the whole or any portion of any scientific or technical information, design, process, procedure, formula or invention which the owner thereof intends to be available only to persons selected by him².

“Knowingly” means.[see jury instructions for knowingly].

¹ *State v. Merski*, 123 N.H. 564 (1983).

² RSA 637:2,I

RSA 638:11: Misapplication of Property (of the government or a financial institution)

The defendant is charged with the crime of misapplication of property. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant dealt with certain property of {the government, a financial institution} in a manner that violated his duty as an employee of that institution; and
2. The defendant dealt with the property in a manner that involved a substantial risk of loss to the owner of the property; and
3. The defendant acted knowingly.

Those are the elements of the crime of misapplication of property. Certain words in the definition need to be further defined.

“Government” means the United States, any state or any county, municipality or other political unit within territory belonging to the United States, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government or formed pursuant to interstate compact or international treaty.¹

“Property” means anything of value, including real estate, tangible and intangible personal property, captured or domestic animals and birds, written instruments or other writings representing or embodying rights concerning real or personal property, labor services, or otherwise containing any thing or value to the owner, commodities of a public utility nature such as telecommunications, gas, electricity, steam, or water, and trade secrets, meaning the whole or any portion of any scientific or technical information, design, process, procedure, formula or invention which the owner thereof intends to be available only to persons selected by him.²

“Knowingly” means..[see definition of knowingly].

¹ RSA 637:10,IV

² RSA 637:2,I.