

Submitted: 06/08/95
Reviewed by committee 06/08/95
Reporter's draft 04/30/97

DRAFT

FRAUD

RSA 638:1, I(a): Forgery -- 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]; and
2. The defendant was without authority to do so; and
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];³³ and
4. The defendant acted [with purpose to defraud anyone]³⁴ [with knowledge that he was facilitating a fraud to be perpetrated by anyone].

Deleted: ; and

Deleted: The defendant acted purposely.¶

Those are the elements of the crime of forgery. Certain words in the definition need to be 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 genuine.³⁵

“To defraud” means to deprive a person of property or any interest, estate, or right, by fraud, deceit or artifice.³⁶

“Purposely” means [see definition of purposely].

“Knowingly” means [see definition of knowingly].

³³ 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).

³⁴ *State v. DeMatteo*, 134 N.H. 296 (1991) (specific person intended to be defrauded need not be identified).

³⁵ BLACK'S LAW DICTIONARY 1387 (5th ed. 1979).

³⁶ 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).

Submitted: 06/08/95
Reviewed by committee 06/08/95
Reporter's draft 04/30/97

DRAFT

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

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:

Deleted: five
Deleted: parts

1. The defendant [made, completed, executed, authenticated, issued, transferred, published, or, otherwise uttered]³⁷ any writing; and
2. The writing purported to be the act of another person; and
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];³⁸ and
4. The defendant acted [with purpose to defraud anyone]³⁹ or [with knowledge that he was facilitating a fraud to be perpetrated by anyone].

Deleted: and

Those are the elements of the crime of forgery. Certain words in the definition need to be 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 genuine.⁴⁰

“To defraud” means to deprive a person of property or any interest, estate, or right, by fraud, deceit or artifice.⁴¹

“Purposely” means [see definition of purposely].

“Knowingly” means [see definition of knowingly].

³⁷ Read one or more items in the list depending on the language in the charging document.
³⁸ 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.
³⁹ *State v. DeMatteo*, 134 N.H. 296 (1991) (specific person intended to be defrauded need not be identified).
⁴⁰ BLACK’S LAW DICTIONARY 1387 (5th ed. 1979).
⁴¹ 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).

Submitted: 06/08/95
Reviewed by committee 06/08/95
Reporter's draft 04/30/97

DRAFT

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

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:

Deleted: five

1. The defendant [made, completed, executed, authenticated, issued, transferred, published, or, otherwise uttered]⁴² any writing; and
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; and
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];⁴³ and
4. The defendant acted [with purpose to defraud anyone]⁴⁴ or [with knowledge that he was facilitating a fraud to be perpetrated by anyone];

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

Deleted: and¶
The defendant acted purposely.¶

“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.⁴⁵

“To defraud” means to deprive a person of property or any interest, estate, or right, by fraud, deceit or artifice.⁵

“Purposely” means [see definition of purposely].

“Knowingly” means [see definition of knowingly].

⁴² Read one or more items in the list depending on the language in the charging document.

⁴³ 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.

⁴⁴ *State v. DeMatteo*, 134 N.H. 296 (1991) (specific person intended to be defrauded need not be identified).

⁴⁵ BLACK’S LAW DICTIONARY 1387 (5th ed. 1979).

⁵ 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).

Submitted: 06/08/95
Reviewed by committee 06/08/95
Reporter's draft 04/30/97

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

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:

Deleted: five

1. The defendant [made, completed, executed, authenticated, issued, transferred, published, or, otherwise uttered]⁴⁶ any writing; and
2. The writing purported to be a copy of an original when no such original existed; and
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]⁴⁷; and
4. The defendant acted [with purpose to defraud anyone]⁴⁸ or [with knowledge that he was facilitating a fraud to be perpetrated by anyone].

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

Deleted: <#>and¶
The defendant acted purposely.¶

“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.⁴⁹

“To defraud” means to deprive a person of property or any interest, estate, or right, by fraud, deceit or artifice.⁵⁰

“Purposely” means [see definition of purposely].

“Knowingly” means [see definition of knowingly].

⁴⁶ Read one or more items in the list depending on the language in the charging document.

⁴⁷ 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.

⁴⁸ *State v. DeMatteo*, 134 N.H. 296 (1991) (specific person intended to be defrauded need not be identified).

⁴⁹ BLACK'S LAW DICTIONARY 1387 (5th ed. 1979).

⁵⁰ 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).

Submitted: 06/08/95
Reviewed by committee 09/15/95
Reporter's draft 04/30/97

DRAFT

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 three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

Deleted: four

1. The defendant [falsified][destroyed][removed][concealed]⁵¹ a writing; and
2. The writing was any [will][deed][mortgage][security instrument][other writing] for which the law provides public recording; and
3. The defendant acted with a purpose to deceive or injure anyone.

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

Deleted: <#>;and¶
The defendant acted purposely.¶

“Purposely” means ...[see definition of purposely].

⁵¹ Read one or more items in the list depending on the language in the charging document.

Submitted: 06/08/95
Reviewed by committee 09/15/95
Reporter's draft 04/30/97

DRAFT

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 three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

Deleted: four

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

Deleted:]

Deleted: or

Deleted: to

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

Deleted: The defendant acted purposely.¶

“Purposely” means [see definition of purposely].

“Knowingly’ means [see definition of knowingly.]

Submitted: 06/08/95
Reviewed by committee 06/08/95
Reporter's draft 04/30/97

DRAFT

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~~ ~~passed~~ a check for the payment of money; and
2. Payment was refused by the bank⁵² on which the check was drawn; and
3. The defendant knew or believed that the check would not be paid by the bank⁵³ If you find that the defendant did not have an account at the bank at the time the check was issued or passed you may, but are not required to, presume that the defendant knew that the check would not be paid.;⁵⁴ and
4. [The face amount of the check exceeded \$1,000][The face amount of the check exceeded \$500.] [The defendant had been convicted under this statute within the twelve months preceding the conduct at issue in this case [class A misdemeanor]; and
5. The defendant acted knowingly.

Deleted: {
Deleted: or
Deleted: }

Formatted: Bullets and Numbering

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

“Knowingly” means [see definition of knowingly].

Deleted: ¶
exceeded \$1,000 [class A felony]¶
[or]¶
exceeded \$500 [class B felony];¶
[or]¶
the defendant had been convicted of an offense under RSA 638:4 within the twelve months preceding the conduct at issue in this case [class A misdemeanor];¶
and¶
Deleted:

⁵² 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).

⁵³ 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).

⁵⁴ RSA 626:7,II.

Submitted: 06/08/95
Reviewed by committee 06/08/95
Reporter's draft 04/30/97

Deleted: One of the elements of the crime of issuing a bad check is that the defendant knew or believed that the check would not be paid. As with each of the elements of this offense, the State must prove this element beyond a reasonable doubt.*

DRAFT

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:

1. The defendant [issued], [passed], checks for the payment of money; and
2. Payment for the checks was refused by the bank⁵⁵ on which the check was drawn; and
3. The defendant knew or believed that the checks would not be paid by the bank [If you find that the defendant did not have an account at the bank at the time the check was issued or passed you may, but are not required to, presume that the defendant knew that the check would not be paid.];⁵⁶ and
4. The defendant [issued], [passed], the checks pursuant to one scheme or course of conduct;⁵⁷ and
5. The face amount of the checks, totaled together [exceeded \$1,000] [exceeded \$500]; and
6. The defendant acted knowingly.

Deleted: {
Deleted: or
Deleted: }

Deleted: {
Deleted: or
Deleted: }
Deleted: {
Deleted: }

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

Deleted: and*

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

⁵⁵ 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).

⁵⁶ [RSA 626:7,II.](#)

⁵⁷ 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).

Submitted: 06/08/95
Reviewed by committee 09/15/95
Reporter's draft 04/30/97

DRAFT

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 ~~two~~, ~~three~~ 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 for the purpose of obtaining property or services; and~~
2. ~~The defendant knew that [the card was stolen] [the card had been revoked or cancelled] [the defendant knew that his/her use of the card was unauthorized by issuer of the card or the person to whom the card was issued]; and~~
3. ~~The value of the property or services exceeded [\$1,000] [\$500].~~

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

Deleted: {

Deleted: four

Deleted: or

Deleted: }

Deleted: 1.

Formatted: Bullets and Numbering

Deleted: to

Deleted: {

Deleted: ,

Deleted: }

Deleted: The card ¶
{ was stolen or had been revoked or canceled } ¶
[or] ¶
The defendant's use of the card was unauthorized by {the issuer of the card, the person to whom the card was issued}; and ¶

Deleted: 4.

Deleted: [Class A felony]

Deleted: [Class B felony]

Submitted: 06/08/95
Reviewed by committee 09/15/95
Reporter's draft 04/30/97

DRAFT

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/her 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];⁵⁸ and
4. The defendant acted knowingly.

Deleted:

These are the elements of the crime of misapplication of property. Certain words in the definition need to be 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 him.⁵⁹

Deleted: see knowingly instruction

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

⁵⁸ *State v. Merski*, 123 N.H. 564 (1983).

⁵⁹ RSA 637:2.I.

Submitted: 06/08/95
Reviewed by committee 09/15/95
Reporter's draft 04/30/97

DRAFT

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/her duty ~~to that entity~~; 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.

Deleted: {
Deleted: ,
Deleted: }
Deleted: as an employee of that institution

Those are the elements of the crime of misapplication of property. Certain words in the definition need to be 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.⁶⁰

“Financial institution” means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.⁶¹

“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.⁶²

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

⁶⁰ RSA 637:10,IV(b).

⁶¹ RSA 637:10, IV(a)

⁶² RSA 637:2,I.