

FORGERY

The defendant is charged with forgery of a _____ [type of document] _____.

Section _____ of chapter 267 of our General Laws provides as follows:

“Whoever,

with intent to injure or defraud,

falsely makes, alters, forges or counterfeits a _____ [type of document] _____

shall be punished”

In order to prove the defendant guilty of this offense, the

Commonwealth must prove two things beyond a reasonable doubt:

First: That the defendant (falsified one or more significant parts of the document in question) (altered one or more significant parts of the document in question) (counterfeited the document in question to make it appear to be genuine); and

Second: That the defendant did so with the intent to injure or to defraud someone.

To have a forgery, something relating to a legal document *itself*, as distinguished from its contents, must be false. Making a false statement *in* a document is a separate crime under some circumstances, but it is not the

offense of forgery, which is concerned with the genuineness of the document itself, rather than the truth of its contents.

Forgery can be committed in three ways: The *first* is to counterfeit or produce what appears to be a genuine legal document, but which is in fact a phony document. The *second* way is to falsely fill in one or more important parts of a genuine document — for example, by forging someone else’s signature on a check or a bill of sale. The *third* way is closely related to the second: altering in a significant way one or more parts of a genuine document that has already been made out — for example, changing the amount on a check.

Besides proving that the defendant (counterfeited) (falsified) (altered) the document in question, the Commonwealth must also prove beyond a reasonable doubt that the defendant acted with the specific intention of defrauding someone.

See Instruction 3.120 (Intent).

Commonwealth v. O’Connell, 438 Mass. 658, 664 n.9, 783 N.E.2d 417, 424 n.9 (2003) (elements of forgery); *Commonwealth v. Apalakis*, 396 Mass. 292, 486 N.E.2d 669 (1985); *Commonwealth v. Segee*, 218 Mass. 501, 504, 106 N.E. 173, 174 (1914); *Commonwealth v. Baldwin*, 11 Gray 197, 198 (1858).

NOTES:

1. **District Court jurisdiction over forgery offenses.** General Laws c. 218, § 26 gives the District Court final jurisdiction over “all felonies punishable by imprisonment in the state prison for not more than five years, . . . [and] forgery of a promissory note, or of an order for money or other property.” That grant of jurisdiction encompasses some (but not all) of the documents listed in G.L. c. 267, §§ 1-8. It includes forgery of a “promissory note; or an order . . . for money or other property” (G.L. c. 267, § 1), or an admission ticket (§ 2), a railroad ticket or pass (§ 2), a railroad stamp (§ 4), or “a bank bill or promissory note payable to the bearer thereof or to the order of any person, issued by any incorporated banking company” (§ 8). The District Court does not have final jurisdiction over forgery of the Land Court’s seal (§ 3), a Commonwealth note (§ 7), or a bank bill or traveller’s check (§ 8).

The District Court also has final jurisdiction over a number of forgery offenses found in other chapters of the General Laws, including forgery of historical objects (G.L. c. 9, § 27C), birth, marriage or death certificates (c. 46, § 30), motor vehicle licenses, permits, certificates or inspector stickers (c. 90, § 24B), motorboat number certificates (c. 90B, § 4A), firearms licenses (c. 140, § 131I), and hunting or fishing licenses (c. 131, § 33).

2. **Claim of authority.** Lack of authority is not an element of the offense of forgery, but if a claim of authority is properly raised, the Commonwealth must prove the absence of authority beyond a reasonable doubt in order to prove the element of fraudulent intent. Such a claim must be raised by timely written notice pursuant to Mass. R. Crim. P. 14(b)(3) or is waived. Lack of authority and fraudulent intent may be proved by circumstantial evidence as well as by testimony from the purported maker. *O’Connell*, 438 Mass. at 664-665, 783 N.E.2d at 423-424. See Instruction 3.160 (License or Authority).