

1491 FORGERY (BY MAKING OR ALTERING A CHECK) — § 943.38(1)**Statutory Definition of the Crime**

Forgery, as defined in § 943.38(1) of the Criminal Code of Wisconsin, is committed by one who with intent to defraud falsely makes or alters a writing or object whereby legal rights or obligations are created or transferred so that it purports to have been made (by another) (at another time) (with different provisions) (by authority of one who did not give such authority).

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The document in this case was a writing by which legal rights or obligations are created or transferred.¹ A bank check is such a writing.²
2. The defendant falsely [(made) (altered)] [(the check) (an endorsement on the check).]³

The (check) (endorsement) must have been falsely (made) (altered) to appear to have been made (by another person) (at another time) (with different terms) (by authority of someone who did not give such authority).⁴

3. The defendant falsely [(made) (altered)] [(a check) (an endorsement)] with intent to defraud.

"Intent to defraud" means that the defendant had the purpose to obtain property that (he) (she) was not entitled to receive.⁵

Deciding About Intent

You cannot look into a person's mind to find intent. Intent must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of forgery have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal was originally published in 1966 and revised in 1991. This revision was approved by the Committee in April 2008 and involved adoption of a new format and nonsubstantive changes to the text.

Under § 943.38(1) and (2), three forms of conduct are made felonies: the forging of a writing or object (Wis JI-Criminal 1491), the uttering of a forged writing or object (Wis JI-Criminal 1492), and the possession of a forged writing or object with intent to utter (Wis JI-Criminal 1493). Though these forms of conduct are distinct, they constitute only one offense, so that the person who both forges and utters an instrument is punishable for but one offense. State v. Nichols, 7 Wis.2d 126, 95 N.W.2d 765 (1959), cited in Little v. State, 85 Wis.2d 558, 562, 271 N.W.2d 105 (1978).

While the forgery statute and the statute defining credit card crimes (§ 943.41) overlap, they are not identical and have different elements. The existence of the credit card crime statute does not impliedly repeal the forgery statute nor does it deny equal protection to those who are charged with forgery for writing another's name on a credit card slip. Mack v. State, 93 Wis.2d 287, 286 N.W.2d 563 (1980).

A factual basis for guilty pleas to charges of forgery under § 943.38(1) was provided by evidence that the defendant opened checking accounts under a false name and issued worthless checks under that false name. State v. Mata, 2001 WI App 184, 247 Wis.2d 1, 632 N.W.2d 872.

1. The instruction is drafted for cases involving a "writing" (and is further limited to "checks," see note 2). But the forgery statute applies to a variety of items, defined in § 943.38(1)(a) as follows:

A writing or object whereby legal rights or obligations are created, terminated or transferred, or any writing commonly relied upon in business or commercial transactions as evidence of debt or property rights.

Other public records and copies or authentications of public records are also included, see subsecs. (1)(b)-(d). This approach was intended to adopt a functional definition of what instruments could be forged, replacing a detailed list of writings in the original forgery statute, sec. 343.56, 1953 Stats. State v. Davis, 105 Wis.2d 690, 694-95, 314 N.W.2d 907 (Ct. App. 1981). Davis held that a receipt evidencing payment for a magazine subscription is a "writing" under the current statute. While the writing must be one that is commonly relied upon in business, forgery does not require that any specific person rely on the genuineness of the writing. Davis, 105 Wis.2d 690, 698.

2. Since bank checks are the writings used in most forgery cases, the rest of the uniform instruction uses only the term "check." If the offense involved a different kind of writing or an "object," the Committee suggests naming the writing or object and using that name whenever "check" appears in the instruction. Whether a particular writing or object is one by which "legal rights or obligations are created or transferred" is a question of fact for the jury to determine. Where the law establishes that a particular writing or object has that effect, it is permissible to communicate that legal rule to the jury. With regard to the definition of "check" and other instruments, see § 403.104.

State v. Perry, 215 Wis.2d 690, 631 N.W.2d 651 (1997), held that "Transchecks" used by truckers for unexpected expenses are writings covered by the forgery statute.

3. A forged endorsement of a check constitutes forgery. 37 C.J.S. Forgery, § 34. Federal forgery statutes referring to falsely making or altering any writing have been interpreted as covering the forgery of an endorsement. See, for example, United States v. Henderson, 298 F.2d 522 (7th Cir. 1962), citing Prussian v. United States, 282 U.S. 675 (1931).

4. The second element combines what might be separated into two elements: the requirement that the writing be falsely made or altered and the requirement that the altered writing purport to have been made by another or with different terms, etc. In the Committee's judgment, this is a single concept. The alternatives following "purports" describe specifically the necessary effects of the false making or altering. This analysis is supported by the legislative history. What is now § 943.38 was drafted as part of the 1950 and 1953 revisions of the Criminal Code. The 1950 draft did not include the word "falsely," explaining that the term "false making"

... is not used here because it raises the problem of what is a false making. Instead the subsection describes just what effect the making or alteration must have in order to be a forgery. The writing must be made or altered so that it purports to have been made by another, at another time, with different terms, or by authority of one who did not give such authority.

1950 Report on the Criminal Code, p. 105.

The 1953 draft used the same construction, but "falsely" was added before the statute was enacted. Thus, "falsely" must be retained as part of the definition of the offense but in the Committee's judgment should be defined in terms of the more specific ways in which it must affect the document.

Examples of the kinds of conduct covered are given in the Volume V, 1953 Judiciary Committee Report on the Criminal Code, p. 131 (Wis. Legislative Council, February 1953).

Signing a check with another's name (an example of making a writing purporting to have been made by another); raising a check (an example of making a writing purporting to have been made with different terms); filling in blanks over the signature of another either without authority or with unauthorized terms (an example of making a writing appearing to have been made by authority of one who did not give such authority).

"Falsely made" does not apply to writing someone else's name as the payer on a postal money order. "Wisconsin requires that a false making must relate to the genuineness of execution of a document, not to the genuineness of its contents." State v. Entringer, 2001 WI App 157, 246 Wis.2d 851, 631 N.W.2d 651.

5. "Intent to defraud" is a term whose meaning varies according to the context in which it is used. 1953 Report on the Criminal Code, page 130, citing United States v. Cohn, 270 U.S. 330 (1925). The Committee concluded that the most understandable explanation of "intent to defraud" in the context of the typical forgery case is "the purpose to obtain property he or she was not entitled to receive." However, the concept is substantially broader, as explained in the 1953 Report:

In the context of this section, "intent to defraud" means an intent either to obtain property from another or to cause him to do some act or refrain from some act in reliance on the writing or object being genuine. For example, if someone signs another's name to a nomination petition intending that the officials believe it is a genuine one and count it in the number necessary to nominate a candidate, he does not intend to steal from the officials; but there would be no question that he intended that they be deceived and act on that signature.

In defining intent to defraud solely in terms of "purpose," the instruction uses only one of the two alternative definitions of "intent" provided in § 939.23(4). The other alternative, "or is aware that his or her conduct is practically certain to cause that result" could be used if raised by the facts of a particular case. See Wis JI-Criminal 923A and 923B for further discussion of the definition of intent.

The sufficiency of the evidence on intent to defraud is discussed in State v. Christopherson, 36 Wis.2d 574, 153 N.W.2d 631 (1967).