

**FRAUDULENT MAKING OF AN ELECTRONIC ACCESS  
DEVICE  
IN THE SECOND DEGREE  
(D Felony)  
(Falsely Making, Completing or Altering Two or More  
Devices)  
PENAL LAW 170.75  
(Committed on or After November 1, 1996)**

The \_\_\_\_ count is Fraudulent Making of an Electronic Access Device in the Second Degree.

Under our law, a person is guilty of Fraudulent Making of an Electronic Access Device in the Second Degree when, with intent to defraud, deceive or injure another, he or she falsely makes, completes, or alters, two or more electronic access devices<sup>1</sup>.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "intent," "electronic access device," "falsely makes," "falsely completes," and "falsely alters."

INTENT means conscious objective or purpose.<sup>1</sup> Thus, a person acts with intent to defraud, deceive or injure another when that person's conscious objective or purpose is to defraud, deceive or injure another.

An ELECTRONIC ACCESS DEVICE means a mobile identification number or electronic serial number that can be used to obtain telephone service.<sup>2</sup>

A person FALSELY MAKES an electronic access device

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<sup>1</sup>The statute adds at this point: "as that term is defined in subdivision eight of section 170.00 of this article." That definition is set forth below.

<sup>1</sup>See Penal Law §15.05(1).

<sup>2</sup>See Penal Law §170.00(8).

when he or she makes an electronic access device in its entirety, which purports to be an authentic creation of its ostensible maker but which is not such either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing thereof.<sup>3</sup>

A person FALSELY COMPLETES an electronic access device when, by adding, inserting or changing matter, he or she transforms an incomplete electronic access device into a complete one, without the authority of anyone entitled to grant it, so that such complete electronic access device appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker.<sup>4</sup>

A person FALSELY ALTERS an electronic access device when, without the authority of anyone entitled to grant it, he or she changes an electronic access device, whether it be in a complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such device in its thus altered form appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker.<sup>5</sup>

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

1. That on or about       (date)      , in the county of       (county)      , the defendant,       (defendant's name)      , falsely made, completed, or altered two or more electronic access devices; and

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<sup>3</sup>See Penal Law §170.00(4).

<sup>4</sup>See Penal Law §170.00(5).

<sup>5</sup>See Penal Law §170.00(6).

2. That the defendant did so with the intent to defraud, deceive or injure another.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Fraudulent Making of an Electronic Access Device in the Second Degree as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Fraudulent Making of an Electronic Access Device in the Second Degree as charged in the \_\_\_\_\_ count.