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Deleted: Criminal Jury Instructions
Drafting Committee*

FALSIFICATION IN OFFICIAL MATTERS

DRAFT

RSA 641:1, I (a) Perjury (False Statement)

The defendant is charged with the crime of perjury. The definition of this crime 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 a false statement under oath or affirmation or swore or affirmed the truth of a statement previously made; and
2. The statement was made during an official proceeding; and⁶³
3. The defendant did not believe the statement to be true; and
4. The statement was material to the proceeding in which it was made; and⁶⁴
5. The defendant acted knowingly; and⁶⁵

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These are the elements of the crime of perjury. Certain words in the definition need to be defined.

“A statement provided under oath or affirmation” means testimony taken after the person either swears or affirms that the testimony to be provided will be true. There is no difference between swearing and affirming.

“An official proceeding” means any proceeding before a legislative, judicial, administrative, or other governmental body, or before an official authorized by law to take evidence under oath or affirmation, including a notary or other person taking evidence in connection with any such proceeding.

That the defendant did not believe the statement was true refers to the defendant’s subjective belief. It means that the defendant did not honestly believe that the statement he gave or was about to give was truthful.⁶⁶

A statement is material if it is capable of affecting the course or outcome of the proceeding in which it is given. [A statement is not material if it is retracted in the course of the official proceeding before it became manifest that the falsification was exposed.]

“Knowingly” means [see definition of knowingly.]

⁶³ Defined in RSA 64:1:1, II; See, *State v. Sands*, 127 N.H. 570 (1983).

⁶⁴ *United States v. Gaudin*, 515 U.S. 506, 132 (1995)(whether materiality is a question for jury); compare RSA 641:1, II (materiality is a question of law for the court). The NH Supreme Court has not addressed this conflict.

⁶⁵ Arguably the elements of official proceeding and materiality are not ones as to which the *mens rea* requirement applies however, in the absence of Supreme Court authority for this proposition, this committee feels the cautious approach is to treat them as material elements. See RSA 626:2 I.

⁶⁶ *Sands v Cunningham*, 617 F. Supp 1551 (D.N.H. 1985).

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RSA 641:1, I (b) Perjury (Inconsistent Statements)

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

1. The defendant made inconsistent statements under oath or affirmation or swore or affirmed the truth of a statement previously made; and
2. The statements were made during an official proceeding; and⁶⁷
3. One of the inconsistent statements was false. The state need not allege or prove which of the statements was false, but only that one or the other was false; and
4. The defendant did not believe the statement to be true. The state need not allege or prove which statement the defendant did not believe to be true, but only that he did not believe one or the other statement to be true; and⁶⁸
5. The statement was material to the proceeding in which it was made; and⁶⁹
6. The defendant acted knowingly; and⁷⁰

These are the elements of the crime of perjury. Certain words in the definition need to be defined.

“Inconsistent statements” mean the statements contradict each other, or both statements cannot be true.

“A statement provided under oath or affirmation” means testimony taken after the person either swears or affirms that the testimony to be provided will be true. There is no difference between swearing and affirming.

“An official proceeding” means any proceeding before a legislative, judicial, administrative, or other governmental body, or before an official authorized by law to take evidence under oath or affirmation, including a notary or other person taking evidence in connection with any such proceeding.

“That the defendant did not believe the statement was true” refers to the defendant’s subjective belief. It means that the defendant did not honestly believe that the statement he gave or was about to give was truthful.⁷¹

“A material statement” is capable of affecting the course or outcome of the proceeding in which it is given [A statement is not material if it is retracted in the course of the official proceedings before it became manifest that the falsification was exposed.]

“Knowingly” means [see definition of knowingly].

⁶⁷ Defined in RSA 641:1, II; See, *State v. Sands*, 127 N.H. 570 (1983).

⁶⁸ RSA 641:1, I (b)

⁶⁹ *United States v. Gaudin*, 515 U.S. 506, (1995) (whether materiality is a question for jury); compare RSA 641:1, II (materiality is a question of law for the court). The NH Supreme Court has not addressed this conflict.

⁷⁰ Arguably, the elements of official proceedings and materiality are not ones as to which the *mens rea* requirement applies. In the absence of Supreme Court authority for this proposition this committee feels the cautious approach is to treat them as material elements. See RSA 626:2 I.

⁷¹ *Sands v Cunningham*, 617 F. Supp. (D.N.H. 1985)

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RSA 641:2 I: False swearing (False statement)

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

1. The defendant made a false statement under oath or affirmation or swore or affirmed the truth of a statement previously made⁷²; and
2. The statement was [made in an official proceeding] [was made with a purpose to mislead a public servant in performing his official function] [was one required by law to be sworn or affirmed before a notary or other person authorized to administer oaths]; and
3. The defendant did not believe the statement to be true; and
4. The defendant acted knowingly; and⁷³
5. The defendant did not retract the falsification before it became manifest that the falsification was or would be exposed.⁷⁴

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These are the elements of the crime of false swearing. Certain words in the definition need to be defined:

A “statement provided under oath or affirmation” means testimony taken after the person either swears or affirms that the testimony to be provided will be true. There is no difference between swearing and affirming.

An “official proceeding” means any proceeding before a legislative, judicial, administrative, or other governmental body, or before an official authorized by law to take evidence under oath or affirmation, including a notary or other person taking evidence in connection with any such proceeding.

That “the defendant did not believe the statement was true” refers to the defendant’s subjective belief. It means that the defendant did not honestly believe that the statement he gave or was about to give was truthful.⁷⁵

“Knowingly” means [see definition of knowingly.]

⁷² Defined in RSA 641:1, II; See *State v. Sands*, 127 N.H. 570 (1983)

⁷³ Arguably, the elements of official proceedings and materiality are not ones as to which the *mens rea* requirement applies, however in the absence of Supreme Court authority for this proposition, the committee feels the cautious approach is to treat them as material elements. See RSA 626:2 I.

⁷⁴ Include this element if there is evidence supporting a finding of retraction.

⁷⁵ *Sands v Cunningham*, 617 F. Supp. 1551 (D.N.H. 1985)

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RSA 641:2, II: False swearing (Inconsistent statement)

The defendant is charged with the crime of false swearing. The definition of this crime has [four][five] parts or elements. The State must prove each element beyond a reasonable doubt. In this case the State must prove that:

1. The defendant made inconsistent statements under oath or affirmation or swore or affirmed the truth of a statement previously made; and
2. One of the inconsistent statements was false. The state need not allege or prove which of the statements was false, but only that one or the other was false; and
3. The defendant did not believe the statement to be true. The State need not allege or prove which statement the defendant did not believe to be true, but only that he did not believe one or the other statement to be true; and⁷⁶
4. The defendant acted knowingly; and⁷⁷
- [5. The defendant did not retract the falsification before it became manifest that the falsification was or would be exposed.⁷⁸]

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These are the elements of the crime of false swearing. Certain words in the definition need to be defined.

“A statement provided under oath or affirmation” means testimony taken after the person either swears or affirms that the testimony to be provided will be true. There is no difference between swearing and affirming.

“An official proceeding” means any proceeding before a legislative, judicial, administrative, or other governmental body, or before an official authorized by law to take evidence under oath or affirmation, including a notary or other person taking evidence in connection with any such proceeding.

“That the defendant did not believe the statement was true” refers to the defendant’s subjective belief. It means that the defendant did not honestly believe that the statement he gave or was about to give was truthful.⁷⁹

“Knowingly” means [see definition of knowingly].

⁷⁶ RSA 641:1, I(b)

⁷⁷ Arguably, the elements of official proceedings and materiality are not ones as to which the *mens rea* requirement applies, however in the absence of Supreme Court authority for this proposition, the committee feels the cautious approach is to treat them as material elements. See RSA 626:2 I.

⁷⁸ Include this element if there is evidence supporting a finding of retraction.

⁷⁹ *Sands v. Cunningham*, 617 F. Supp. 1551 (D.N.H. 1985).

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RSA 641:3, 1: Unsworn falsification

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

1. The defendant made a false written statement; and
2. The statement was made on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein were punishable; and
3. The defendant did not believe the statement to be true; and
4. The defendant acted knowingly; and¹
5. The defendant did not retract the falsification before it became manifest that the falsification was or would be exposed.²

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These are the elements of the crime of unsworn falsification. Certain words in the definition need to be defined.

“That the defendant did not believe the statement was true” refers to the defendant’s subjective belief. It means that the defendant did not honestly believe that the statement he gave or was about to give was truthful.³

“Knowingly” means [see definition of knowingly].

¹ Arguably, the elements of official proceedings and materiality are not ones as to which the *mens rea* requirement applies, however in the absence of Supreme Court authority for this proposition, the committee feels the cautious approach is to treat them as material elements. See RSA 626:2 I.

² Include this element if there is evidence supporting a finding of retraction.

³ *Sands v. Cunningham*, 617 F. Supp. 1551 (D.N.H. 1985).

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RSA 641:3, II(a): Unsworn falsification

The defendant is charged with the crime of unsworn falsification. The definition of this crime 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 made a false written statement; and
2. Which he did not believe to be true; and
3. The defendant acted with the purpose to deceive a public servant in the performance of his official function; and
- [4. The defendant did not retract the falsification before it became manifest that the falsification was or would be exposed]¹.

These are the elements of the crime of unsworn falsification. Certain words in the definition need to be defined.

A false statement must be in writing or involve a physical object such as a map or sample specimen.

“That the defendant did not believe the statement was true” refers to the defendant’s subjective belief. It means that the defendant did not honestly believe that the statement he gave or was about to give was truthful.² It is not necessary for the statement to be sworn in order for the offense to be committed.

“Purposely” means [see definition of purposely].

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Made a false written statement which he did not believe to be true;¶
Knowingly created a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent the statement therein from being misleading;¶
Submitted or invited reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false;¶

¹ Include this element if there is evidence supporting a finding of retraction.

² *Sands v. Cunningham*, 617 F. Supp. 1551 (D.N.H. 1985)

RSA 641:3, II(b): Unsworn falsification

The defendant is charged with the crime of unsworn falsification. The definition of this crime 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 knowingly created a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent the statement therein from being misleading; and~~ Deleted:
2. The defendant created a false impression knowingly; and
3. The defendant acted with the purpose to deceive a public servant in the performance of his official function; and
4. The defendant did not retract the falsification before it became manifest that the falsification was or would be exposed]¹.

These are the elements of the crime of unsworn falsification. Certain words in the definition need to be defined.

A false statement must be in writing or involve a physical object such as a map or sample specimen.

“That the defendant did not believe the statement was true” refers to the defendant’s subjective belief. It means that the defendant did not honestly believe that the statement he gave or was about to give was truthful.² It is not necessary for the statement to be sworn in order for the offense to be committed.

“Purposely” means [see definition of purposely].

“Knowingly” means [see definition of knowingly.]

¹ Include this element if there is evidence supporting a finding of retraction.

² *Sands v. Cunningham*, 617 F. Supp. 1551 (D.N.H. 1985)

RSA 641:3, II (c): Unsworn falsification

The defendant is charged with the crime of unsworn falsification. The definition of this crime 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 knowingly submitted or invited reliance on any sample, specimen, map, boundary mark, or other object which ; and
2. The defendant knew this submission to be false; and
3. The defendant acted with the purpose to deceive a public servant in the performance of his official function; and
- [4. The defendant did not retract the falsification before it became manifest that the falsification was or would be exposed]¹.

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These are the elements of the crime of unsworn falsification. Certain words in the definition need to be defined.

A false statement must be in writing or involve a physical object such as a map or sample specimen.

“That the defendant did not believe the statement was true” refers to the defendant’s subjective belief. It means that the defendant did not honestly believe that the statement he gave or was about to give was truthful.² It is not necessary for the statement to be sworn in order for the offense to be committed.

“Purposely” means [see definition of purposely].

“Knowingly” means [see definition of knowingly]

¹ Include this element if there is evidence supporting a finding of retraction.

² *Sands v. Cunningham*, 617 F. Supp. 1551 (D.N.H. 1985)

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RSA 641:4, I: False reports to law enforcement¹

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The defendant is charged with the crime of false report to law enforcement. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

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1. The defendant gave or caused to be given false information to a law enforcement officer; and
2. The defendant knew that the information was false and that he was giving it (or causing it to be given) to a law enforcement officer; and
3. The defendant acted with the purpose of inducing the officer to believe that another had committed an offense.

These are the elements of the crime of false report to law enforcement. Certain words need to be defined:

“Knowingly” means [see definition of knowingly].

“Purposely” means [see definition of purposely.]

¹ *McGranahan v. Dahar*, 119 N.H. 758 (1979); *State v. Davis*, 133 N.H. 211 (1990)

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RSA 641:4, II: False reports to law enforcement.

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N.H. 758 (1979); *State v. Davis*, 133
N.H. 211 (1990).]¶

The defendant is charged with the crime of false report to law enforcement. The definition of this crime has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant gave or caused to be given information to a law enforcement officer, and such information concerned [the commission of an offense], [the danger from an explosion or other dangerous substance]; and
2. The defendant knew [that the offense or danger did not occur][that he had no information relating to the offense or danger].

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These are the elements of the crime of false report to law enforcement. Certain words need to be further defined:

“Knowingly” means [see definition of knowingly.]

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RSA 641:5, I. Tampering with Witnesses and Informants

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

1. The defendant believed that an official proceeding¹ or investigation was pending or was about to be instituted; and
2. The defendant attempted to induce or otherwise caused a person to testify (or inform) falsely [withhold any testimony, information, document, or thing] [elude legal process summoning him to provide evidence] [absent himself from any proceeding or investigation to which he had been summoned]; and
3. The defendant acted [knowingly] [purposely].

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These are the elements of the crime of tampering with witnesses and informants. Certain words in the definition need to be defined.

“Knowingly” means [see definition of knowingly.]

“Purposely” means [see definition of purposely.]

¹ RSA 641:1, II

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RSA 641:5, II: Tampering with Witnesses and Informants (Retaliation)

The defendant is charged with the crime of tampering with witnesses and informants by retaliation. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant committed an unlawful act; and
2. Such act was in retaliation for something done by another in his capacity as a witness or informant; and
3. The defendant acted [knowingly] [purposely].

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These are the elements of the crime of tampering with witnesses and informants by retaliation. Certain words in the definition need to be defined.

“Knowingly” means [see definition of knowingly.]

“Purposely” means [see definition of purposely.]

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RSA 641:5, III: Tampering with Witnesses and Informants (Solicitation)

The defendant is charged with the crime of tampering with witnesses and informants by solicitation. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant ~~solicited~~, ~~accepted~~, ~~or agreed to accept~~ a benefit from another; and
2. The benefit was in consideration of the defendant's having [to testify (or inform) falsely][withhold any testimony, information, document, or thing][elude legal process summoning him to provide evidence]; and
3. The defendant acted [knowingly] [purposely].

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These are the elements of the crime of tampering with witnesses and informants. Certain words need to be defined:

“Knowingly” means [see definition of knowingly.]

“Purposely” means [see definition of purposely.]

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RSA 641:6, I, Falsifying Physical Evidence

The defendant is charged with the crime of falsifying physical evidence. The definition of the crime of falsifying physical evidence has three parts. The state must prove each part of the definition beyond a reasonable doubt. Thus, the state must prove:

1. The defendant believed that an official proceeding or investigation was pending or about to be instituted;⁸⁰ and
2. The defendant ~~altered~~ ~~destroyed~~ ~~concealed~~ ~~removed~~ physical evidence; and
3. The defendant's purpose in committing that act was to impair the verity or availability of the physical evidence in the proceeding ~~or~~ investigation.

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These are the elements of the crime of falsifying physical evidence. Certain words need to be defined.

“Official proceeding” means any proceeding before a legislative, judicial, administrative or other governmental body or official authorized by law to take evidence under oath or affirmation including a notary or other person taking evidence in connection with any such proceeding.

“Purposely” means [see definition of purposely.]

⁸⁰ The use of the word believed most likely requires proof of the defendant's subjective state of mind. See *State v. Maya* 127 NH 684.

RSA 641:6, II: Falsifying Physical Evidence

The defendant is charged with the crime of falsifying physical evidence. The definition of the crime of falsifying physical evidence has three parts. The State must prove each part of the definition beyond a reasonable doubt. Thus, the State must prove:

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1. The defendant believed that an official proceeding or investigation was pending or about to be instituted,⁸¹ and
2. The defendant [made][presented][used] physical evidence that [he][she] knew to be false; and
3. The defendant's purpose was to deceive a public servant who was or might have been engaged in such a proceeding or investigation.

These are the elements of the crime of falsifying physical evidence. Certain words need to be defined.

“Official proceeding” means any proceeding before a legislative, judicial, administrative or other governmental body or official authorized by law to take evidence under oath or affirmation including a notary or other person taking evidence in connection with any such proceeding.

“A public servant means “any officer or employee of the state or any political subdivision thereof, including judges, legislators, consultants, jurors, and person otherwise performing a governmental function.

“Purposely” means [see definition of purposely.]

⁸¹ The use of the word believed most likely requires proof of the defendant's subjective state of mind. *See State v. Maya* 127 NH 684.

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DRAFT
RSA 641:7, I, Tampering with Public Records

The defendant is charged with the crime of tampering with public records. The definition of the crime of tampering with public records has two parts. The State must prove each part of the definition beyond a reasonable doubt. Thus, the State must prove:

1. The defendant [made a false entry in][made a false alteration to] a public record;
and
2. The defendant acted knowingly.

These are the elements of the crime of tampering with public records. Certain words need to be defined:

“A public records” means something belonging to, received by, or kept by the government for information or record.

“Knowingly” means [see definition of knowingly.]

RSA 641:7, II: Tampering with Public Records

The defendant is charged with the crime of tampering with public records. The definition of the crime of tampering with public records has three parts. The State must prove each part of the definition beyond a reasonable doubt. Thus, the State must prove:

1. The defendant presented or used some thing; and
2. The defendant knew it to be false; and
3. The defendant's purpose was that it be taken as a genuine part of the public record.

These are the elements of the crime of tampering with public records. Certain words need to be defined:

“A public record” means something belonging to, received by or kept by the government for information or record.

“Knowingly” means [see definition of knowingly.]

“Purposely” means [see definition of purposely.]

RSA 641:7, III: Tampering with Public Records

The defendant is charged with the crime of tampering with public records. The definition of the crime of tampering with public records has three parts. The State must prove each part of the definition beyond a reasonable doubt. Thus, the State must prove:

1. The defendant [destroyed][concealed][removed][impaired] a public record or part thereof; and
2. The defendant acting unlawfully; and
3. The defendant's purpose was to impair the truth or availability of the record.

These are the elements of the crime of tampering with public records. Certain words need to be defined:

“A public record” means something belonging to, received by or kept by the government for information or record.

“Purposely” means [see definition of purposely.]

“Unlawful” – to be further researched by the committee

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RSA 641:8: False Filing with the Director of Charitable Trusts

The defendant is charged with the crime of false filing with the director of charitable trusts. The definition of the crime of false filing with the director of charitable trusts has two parts. The state must prove each part of the definition beyond a reasonable doubt. Thus the state must prove:

1. The defendant made a [false entry][false alteration] of a [registration statement] [annual report] [or other information] require to be filed with the director of charitable trusts ;and
2. The defendant acted knowingly.

These are the elements of the crime of false filing with the director or charitable trusts. Certain words need to be defined:

“Knowingly” means [see definition of knowingly.]