

PERJURY IN THE THIRD DEGREE
Penal Law § 210.05
(Committed on or after Sept. 1, 1967)
Revised May 2020 ¹

The (specify) count is Perjury in the Third Degree.

Under our law, a person is guilty of Perjury in the Third Degree when he or she swears falsely.

The following term used in that definition has a special meaning:

A person **SWEARS FALSELY** when that person intentionally makes a false statement which he or she does not believe to be true

Select appropriate alternative:
while giving testimony.
under oath in a subscribed written instrument.²

The following terms used in that definition have a special meaning:

INTENT means conscious objective or purpose. Thus, a person intentionally makes a false statement which he or she does not believe to be true when that person's conscious objective or purpose is to do so.³

[**TESTIMONY** means an oral statement made under oath in a proceeding before any court, body, agency, public servant or other person authorized by law to conduct such proceeding

¹ The May 2020 revision was for the purpose of deleting the instruction for "inconsistent statements" because separate instructions were added for that form of perjury; other conforming revisions were also made.

² See Penal Law §210.00(5).

³ See Penal Law §15.05(1).

and to administer the oath or cause it to be administered.⁴ Under our law, (*specify*) is authorized by law to conduct a proceeding and to administer the oath or cause it to be administered.]

[The term OATH includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated.⁵ Under our law, (*specify mode*) is an authorized mode of attesting to the truth of that which is stated.]

[NOTE: Add if prosecution of a false swearing in a subscribed written instrument:

Under our law, a false swearing in a subscribed written instrument is not deemed complete until the instrument is delivered by its subscriber, or by someone acting in his or her behalf, to another person with intent that it be uttered or published as true.⁶ A person delivers a subscribed written instrument to another with intent that it be uttered or published as true when his or her conscious objective or purpose is that the instrument be uttered or published as true.⁷]

[NOTE: Add if one or more witnesses testify to the falsity of a statement:⁸

In any prosecution for perjury, falsity of a statement may not be established by the uncorroborated testimony of a single

⁴ Penal Law §210.00(3).

⁵ Penal Law § 210.00(1).

⁶ See Penal Law § 210.00(5).

⁷ See Penal Law §15.05(1).

⁸ Penal Law § 210.50. The corroboration requirement does not apply to a perjury prosecution based upon proof of falsity that is entirely circumstantial [*People v. Rosner*, 67 N.Y.2d 290, 295 (1986); *People v. Doody*, 172 N.Y. 165, 168 (1902)]; instead the CJI2d Circumstantial Evidence-Entire Case charge should be given. Nor does the corroboration rule apply when the perjury prosecution is based upon non-testimonial evidence, such as a “duly authenticated tape recording” of the conversation allegedly lied about [*People v. Lee*, 34 N.Y.2d 884, 885 (1974)], or when the prosecution is ~~Error! Main Document Only~~ based upon inconsistent statements.

witness. What that means is that the falsity of the defendant's statement may not be established by the testimony of a single witness even if that testimony is found to be believable. There must be some additional evidence, independent of that **single** witness, tending to prove that the defendant's statement was false.⁹

[NOTE; Add where appropriate:

Under our law, it is no defense to a prosecution for perjury that:

the defendant was not competent to make the false statement alleged; *or*

the defendant mistakenly believed the false statement to be immaterial; *or*

the oath was administered or taken in an irregular manner or that the authority or jurisdiction of the attesting officer who administered the oath was defective, if such defect was excusable under any statute or rule of law.¹⁰]

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

1. That on or about (date), in the County of (County), the defendant, (defendant's name), intentionally made a false statement which he/she did not believe to be true; and

2. That the defendant did so

⁹ See *People v. Stanard*, 42 N.Y.2d 74 (1977); *People v. Sabella*, 35 N.Y.2d 158 (1974) *overruled in part on other grounds* *People v. Brown*, 40 N.Y.2d 381 (1976).

¹⁰ See Penal Law §210.30.

Select the appropriate alternative:

while giving testimony.
under oath in a subscribed written instrument.

[NOTE: If the affirmative defense does not apply, conclude as follows:

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

[NOTE: If the affirmative defense applies, continue as follows:

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.

If you find that the People have proven beyond a reasonable doubt both of those elements, you must consider an affirmative defense the defendant has raised. Remember, if you have already found the defendant not guilty of Perjury in the Third Degree, you will not consider the affirmative defense.

Under our law, in any prosecution for perjury, it is an affirmative defense that the defendant retracted his or her false statement in the course of the proceeding in which it was made before such false statement substantially affected the proceeding and before it became manifest that its falsity was or would be exposed.¹¹

¹¹ See Penal Law §210.25.

Under our law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider evidence introduced by the People or by the defendant.

A preponderance of the evidence means the greater part of the believable and reliable evidence, not in terms of the number of witnesses or the length of time taken to present the evidence, but in terms of its quality and the weight and convincing effect it has. For the affirmative defense to be proved by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to outweigh any evidence to the contrary.

If you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based upon your initial determination that the People have proven beyond a reasonable doubt both of the elements of Perjury in the Third Degree, you must find the defendant guilty of that crime.

If you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not guilty of Perjury in the Third Degree.