

**AFFIRMATIVE DEFENSE**

**ISSUING A BAD CHECK**

**PENAL LAW 190.15**

**(Committed on or after Sept. 1, 1967)**

If you find that the People have not proven beyond a reasonable doubt each of those elements, you must find the defendant not guilty of the crime of Issuing a Bad Check as charged in the \_\_\_\_\_ count.

If you find that the People have proven beyond a reasonable doubt each of those elements, then you must consider the affirmative defense the defendant has raised.<sup>1</sup>

Under our law, it is an affirmative defense to a charge of Issuing A Bad Check, that

*Select appropriate alternative:*

the defendant or a person acting in his/her behalf made full satisfaction of the amount of the check within ten days after the dishonor by the drawee;

the defendant, in acting as a representative drawer, did so as an employee who, without personal benefit, merely executed the orders of his employer or of a superior officer or employee generally authorized to direct his/her activities.

Under the 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 the defendant.

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<sup>1</sup> See Penal Law § 190.15

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 to present the evidence, but in terms of its quality, weight and convincing effect. For the affirmative defense to be proven 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 each of the elements of Issuing A Bad Check, 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 Issuing A Bad Check,