

New Fraud Instructions

September 21, 2024

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1 **CPJC 32.1 Fraud Offenses Generally**

2 **Intent to Defraud or Harm Another.** Many, though not all, white-collar crimes lack a traditional
3 mental state and merely require that the actor have the intent to defraud or harm another. See Tex. Penal
4 Code § 32.21(a)(1), (b); *Jones v. State*, 571 S.W.2d 191, 193 (Tex. Crim. App. 1978) (“[I]ntent to defraud or
5 harm another’ . . . is the essential mental element.”). With fraud offenses, the mental state is not attached
6 to the act itself (e.g., “intentionally or knowingly passed a document”). Rather, it is attached to motive
7 behind the act (e.g., “with the intent to defraud or harm another, the defendant passed a document”).
8 When an offense has at least one mental state, the court of criminal appeals almost never tries to
9 shoehorn in another; the voluntariness of the conduct is sufficient. See *Alvarado v. State*, 704 S.W.2d 36,
10 38 (Tex. Crim. App. 1985) (distinguishing conduct that requires a mental state from that which needs only
11 be voluntary); Tex. Penal Code § 6.01(a) (requiring a voluntary act or omission). Here, the law only
12 requires the jury be instructed on the element of “intent to defraud or harm another.” The trial court has
13 no burden to manufacture a second mental element to attach to the actus reus.

14 **Defining “Defraud.”** The term “defraud” is not defined in chapter 32 or Tex. Penal Code § 1.07.
15 For that reason, it is not defined in the Committee’s pattern instructions.

16

17 **Offense Level.** The default offense level for forgery is a class A misdemeanor. Tex. Penal Code §
18 32.21(c). Two frequently used subsections, (d) and (e), purport to increase the offense level to a state
19 jail felony and third-degree felony, respectively, based on forgery of a specified type of writing
20 regardless of the defendant’s purpose for committing forgery or the value of any goods or services
21 involved. In 2017, the legislature added a new subsection to the forgery statute, (e-1), which sets forth
22 an alternative “value ladder” offense-classification scheme comparable to that for theft. See Tex. Penal
23 Code § 32.21(e-1). It applies only when “the actor engaged in the conduct to obtain or attempt to
24 obtain a property or service.” Tex. Penal Code § 32.21(e-1). This is referred to by the court of criminal
25 appeals as the “purpose” element. This value-ladder provision, however, did not replace (d) and (e).
26 Instead, the 2017 amendments also added language to subsections (d) and (e) stating that those
27 provisions are “[s]ubject to Subsection (e-1).” This creates problems when drafting jury charges, some
28 of which were recently noted by the court of criminal appeals.

29 In *State v. Green*, 682 S.W.3d 253 (Tex. Crim. App. 2024), the court considered two cases from
30 the Sixth Court of Appeals involving the interpretation of these 2017 amendments. In a consolidated
31 opinion, the court of criminal appeals held that subsections (b), (d), (e), and (e-1) are four separate
32 offenses. *Green*, 682 S.W.3d at 258, 276-77. That is, “subsections (d) and (e) do not function as
33 enhancing elements to an offense under subsection (e-1)” as the court of appeals held. *Green*, 682
34 S.W.3d at 258. Nor is (e-1) a punishment provision; “purpose” is an element of an (e-1) forgery-to-
35 obtain-property-or-services offense. *Green*, 682 S.W.3d at 270, 272. This means that, in a traditional
36 (d) or (e) case, the state need not allege—and the jury charge need not include—a non-statutory
37 “purpose” element to show that the value ladder is inapplicable. *Green*, 682 S.W.3d at 270, 277. In
38 other words, it is not treated as an exception. *Green*, 682 S.W.3d at 279. However, subsection (e-1) is
39 not discretionary if raised by the facts. *Green*, 682 S.W.3d at 270. If the state brings a felony forgery
40 prosecution under section 32.21(d) or (e) by tracking the statutory language but facts at trial ultimately
41 show that the actor’s purpose for forgery was that of (e-1), he is entitled to be convicted and punished

42 under the provisions in the value ladder if doing so would result in a reduced offense classification and
43 range of punishment. *Green*, 682 S.W.3d at 258-59, 278. Note that there is a presumption of intent to
44 obtain property or service for forged money. Tex. Penal Code § 32.21(f-1).

45 The court left numerous questions unanswered. It said a defendant in such circumstances could raise
46 the claim that (e-1) applies, but it explicitly did not decide whether this could be done pretrial (if the
47 indictment includes the requisite facts suggesting (e-1) applies), how it would be addressed at the
48 charge conference, or how preservation requirements apply to any of this. *Green*, 682 S.W.3d at 278.
49 Perhaps more troublesome, the court did not explain what should happen when the state pleads an (e-
50 1) purpose that would result in a misdemeanor property value but fails to prove it. In that case, the
51 “lesser” included offense of that misdemeanor could be a felony. Although not precluded by Tex. Code
52 Crim. Proc. art. 37.09, a county court has no jurisdiction to enter a judgment of guilty on a felony.

53 **Forgery Victims.** It is important to note that the person whom the defendant intended to defraud
54 or harm is not necessarily the same person whom the writing appeared to be the act of.

55 **“Writing” in the Application Unit.** When the described writing is a writing as a matter of law
56 under Tex. Penal Code § 32.21(a)(2) and (d), that issue should not be put before a jury. Section
57 32.21(a)(2) states that “writing” includes (1) printing or any other method of recording information; (2)
58 money, coins, tokens, stamps, seals, credit cards, badges, and trademarks; and (3) symbols of value,
59 right, privilege, or identification. Section 32.21(d) affixes a state jail felony punishment range if the
60 writing purports to be a will, codicil, deed, deed of trust, mortgage, security instrument, security
61 agreement, credit card, check, authorization to debit an account at a financial institution, or similar sight
62 order for payment of money, contract, release, or other commercial instrument.

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63 **Lack of Forgery Definition.** “Forge” is defined by statute. Typically, it is the practice of the Committee to
64 include statutorily defined terms in the definitions unit of the jury charge. However, because the
65 definition of “forge” amounts to a recitation of the elements of the offense as they are laid out in the
66 application paragraph, “forge” is not specifically defined in these charges.

67

68 **CPJC 32.2 Instruction—Forgery—“Committing” the Forgery of a Specifically**
69 **Enumerated Writing**

70 **LAW SPECIFIC TO THIS CASE**

71 The state accuses the defendant of having committed the offense of forgery.

72 **Relevant Statutes**

73 A person commits the offense of forgery if the person
74 [makes/alters/executes/completes/authenticates] a writing so that it purports to [be/have been] [the
75 act of another who did not authorize that act/executed at a time or place or in a numbered sequence
76 other than was in fact the case/a copy of an original when no such original existed] with the intent to
77 defraud or harm another.

78 **Definitions**

79 *Another* Texas Bar Practice Proposed Changes

80 “Another” means a person other than the actor.

81 *Actor*

82 “Actor” means a person whose criminal responsibility is in issue in a criminal action.

83 *Harm*

84 "Harm" means anything reasonably regarded as loss, disadvantage, or injury, including harm to
85 another person in whose welfare the person affected is interested.

86 *Writing*

87 A writing includes (1) a printing or any other method of recording information; (2) money, coins,
88 tokens, stamps, seals, credit cards, badges, and trademarks; or (3) symbols of value, right, privilege, or
89 identification.

90 *Intending to Defraud or Harm Another*

91 A person intends to defraud or harm another if it is the person's conscious objective or desire to
92 defraud or harm another.

93 **Presumption of Intent to Obtain Property or Service**

94 The law provides for a presumption that you may wish to apply in this case. This presumption
95 can apply only if you find the state has proved, beyond a reasonable doubt, that the defendant
96 possessed money that had been altered or made.

97 If you find the state has proved, beyond a reasonable doubt, the defendant possessed money
98 that had been *[include specific manners of forgery]* as mentioned above, then you may infer from this
99 fact that the defendant intended to obtain a property or service of a value equal to the total purported
100 value of the forged money. You are not, however, required to infer or find this even if you find that the
101 defendant possessed money that had been *[include specific manners of forgery]*.

102 If you have a reasonable doubt whether the defendant possessed money that had been *[include*
103 *specific manners of forgery]*, you are not to consider this presumption for any purpose.

104 If you apply this presumption, you may conclude that the state has proved that the defendant
105 intended to obtain a property or service of a value equal to the total purported value of the forged
106 money. If you do decide to apply the presumption to show the state has proved the defendant intended
107 to obtain a property or service of a value equal to the total purported value of the forged money, you
108 must still decide, beyond a reasonable doubt, whether the state has proved the defendant *[insert*

109 *specific allegations, e.g.,* altered, made, or executed] a writing so that it appeared to be the act of
110 [name], who did not authorize the act, and the defendant did this with the intent to defraud or harm
111 [name].

112 If you conclude you cannot apply the presumption or you choose not to apply it, you must still
113 consider whether—without reference to the presumption—the evidence proves beyond a reasonable
114 doubt that the defendant intended to obtain property or a service in an amount equal to the allegedly
115 forged funds.

116 **Application of Law to Facts**

117 You must determine whether the state has proved, beyond a reasonable doubt, [four/five]
118 elements. The elements are that—

- 119 1. the defendant, in [county] County, Texas, on or about [date], [insert specific allegations, e.g.,
120 altered, made, or executed] a [describe the alleged writing, e.g., check or will], a writing;
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- 121 2. the defendant did this so that it appeared to be the act of [name];
- 122 3. [name] did not authorize the act; [and]
- 123 4. the defendant did this with the intent to defraud or harm [name][./; and]
124 [Include the following if applicable.]
- 125 5. the defendant did this to obtain property or a service in an amount of [insert appropriate
126 dollar range from Tex. Penal Code § 32.21(e-1)].

127 You must all agree on elements 1, 2, 3, [and 4/4, and 5] listed above.

128 If you all agree the state has failed to prove, beyond a reasonable doubt, one or more of
129 elements 1,2, 3, [and 4/4, and 5] above, you must find the defendant “not guilty.”

130 If you all agree the state has proved, beyond a reasonable doubt, elements 1, 2, 3, [and 4/4, and
131 5] listed above, you must find the defendant “guilty.”

132 *[Insert any other instructions raised by the evidence. Then continue with the verdict form found*
133 *in CPJC 2.1, the general charge.]*

134 **COMMENTS**

135

136 Forgery is prohibited by and defined in Tex. Penal Code § 32.21. The definition of “another” is from Tex.
137 Penal Code § 1.07(a)(5). The definition of “actor” is in Tex. Penal Code § 1.07(a)(2). The definition of
138 “harm” is in Tex. Penal Code § 1.07(a)(25). The definition of “writing” is in Tex. Penal Code § 32.21(a)(2).
139 The definition of “intending to defraud or harm another” is in Tex. Penal Code § 32.21(f).

140 **Reason for Engaging in Forgery.** The application unit of this charge was drafted on the
141 *Texas Bar Practice Proposed Changes* assumption that the forged writing in question was a writing that would otherwise require prosecution
142 under Tex. Penal Code § 32.21(d) or (e) but falls within the ambit of (e-1) because of the intended
143 purpose of the forgery. It also includes the presumption provided by section 32.21(f-1). If the writing in
144 question classifies the offense as a misdemeanor offense strictly under subsection (b) or the actor did
145 not commit the forgery for the purpose of obtaining property or services, the fifth element would not be
146 needed.

147 **Obtaining Property or Services.** Element 5 needs to be included when alleged in the charging
148 instrument. This language should also be included when raised by the evidence at trial (i.e., the
149 defendant used a forged \$20 bill to buy a \$2 lighter). For instances where this is not the case, element 5
150 should be removed.

151 **CPJC 32.3 Instruction—Forgery—“Committing” the Forgery without Specifically**
152 **Enumerated Writing**

153 **LAW SPECIFIC TO THIS CASE**

154 The state accuses the defendant of having committed the offense of forgery.

155 **Relevant Statutes**

156 A person commits the offense of forgery if the person [makes/alters/executes/
157 completes/authenticates] a writing so that it purports to [be/have been] [the act of another who did not
158 authorize that act/executed at a time or place or in a numbered sequence other than was in fact the
159 case/a copy of an original when no such original existed] with the intent to defraud or harm another.

160 **Definitions**

161 *Another*

162 *Another* means a person other than the actor.
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163 *Actor*

164 *Actor* means a person whose criminal responsibility is in issue in a criminal action.

165 *Harm*

166 *Harm* means anything reasonably regarded as loss, disadvantage, or injury, including harm to
167 another person in whose welfare the person affected is interested.

168 *Writing*

169 A writing includes (1) a printing or any other method of recording information; (2) money, coins,
170 tokens, stamps, seals, credit cards, badges, and trademarks; or (3) symbols of value, right, privilege, or
171 identification.

172 *Intending to Defraud or Harm Another*

173 A person intends to defraud or harm another if it is the person’s conscious objective or desire to
174 defraud or harm another.

175 **Application of Law to Facts**

176 You must determine whether the state has proved, beyond a reasonable doubt, [five/six]
177 elements. The elements are that—

- 178 1. the defendant in [county] County, Texas, on or about [date], [insert specific allegations, e.g.,
179 altered, made, or executed] a [describe the alleged writing, e.g., baseball with a forged
180 signature];
- 181 2. [describe alleged writing] was a writing;
- 182 3. the defendant did this so that it appeared to be the act of [name];
- 183 4. [name] did not authorize the act; [and] Texas Bar Practice Proposed Changes
- 184 5. the defendant did this with the intent to defraud or harm [name][./; and]
185 [Include the following if applicable.]
- 186 6. the defendant did this to obtain property or a service in an amount of [insert appropriate
187 dollar range from Tex. Penal Code § 32.21(e-1)].

188 You must all agree on elements 1, 2, 3, 4, [and 5/5, and 6] listed above.

189 If you all agree the state has failed to prove, beyond a reasonable doubt, one or more of
190 elements 1, 2, 3, 4 [and 5/5, and 6] above, you must find the defendant “not guilty.”

191 If you all agree the state has proved, beyond a reasonable doubt, elements 1, 2, 3, 4, [and 5/5,
192 and 6] listed above, you must find the defendant “guilty.”

207 **CPJC 32.4 Instruction—Forgery—“Passing” a Specifically Enumerated Forged Writing**

208 **LAW SPECIFIC TO THIS CASE**

209 The state accuses the defendant of having committed the offense of forgery.

210 **Relevant Statutes**

211 A person commits the offense of forgery if the person [issues/transfers/registers the transfer
212 of/passes/publishes/otherwise utters] a writing that has been altered, made, completed, executed, or
213 authenticated so that it purports to [be the act of another who did not authorize the act/have been
214 executed at a time or place or in a numbered sequence other than was in fact the case/be a copy of an
215 original when no such original existed] with the intent to defraud or harm another.

216 **Definitions**

217 *Another*

Texas Bar Practice Proposed Changes

218 “Another” means a person other than the actor.

219 *Actor*

220 “Actor” means a person whose criminal responsibility is in issue in a criminal action.

221 *Harm*

222 "Harm" means anything reasonably regarded as loss, disadvantage, or injury, including harm to
223 another person in whose welfare the person affected is interested.

224 *Writing*

225 *[Include one or more of the items in the following definition as dictated by the charging instrument.]*

226 A writing includes (1) a printing or any other method of recording information, (2) money, coins,
227 tokens, stamps, seals, credit cards, badges, and trademarks, or (3) symbols of value, right, privilege, or
228 identification.

229 *Intending to Defraud or Harm Another*

230 A person intends to defraud or harm another if it is the person's conscious objective or desire to
231 defraud or harm another.

232 **Application of Law to Facts**

233 You must determine whether the state has proved, beyond a reasonable doubt, five elements.
234 The elements are that—

- 235 1. the defendant, in [county] County, Texas, on or about [date], [insert specific allegations, e.g.,
236 transferred] a [describe alleged writing, e.g., check], a writing, to [name];
237 2. the defendant did this knowing the [describe writing] had been altered so that it appeared
238 to be the act of [name];
239 [Select one of the following.]
240 3. [name] did not authorize this;
241 [Or]
242 3. it was not the act of [name] nor did they authorize it;
243 4. the defendant intended to defraud or harm [name]; and
244 5. the defendant did this to obtain property or a service in an amount of [insert appropriate
245 dollar range from Tex. Penal Code § 32.21(e-1)].

246 You must all agree on elements 1, 2, 3, 4, and 5 listed above.

247 If you all agree the state has failed to prove, beyond a reasonable doubt, one or more of
248 elements 1,2, 3, 4, and 5 above, you must find the defendant “not guilty.”

249 If you all agree the state has proved, beyond a reasonable doubt, elements 1, 2, 3, 4 and 5 listed
250 above, you must find the defendant “guilty.”

251 *[Insert any other instructions raised by the evidence. Then continue with the verdict form found*
252 *in CPJC 2.1, the general charge.]*

253 **COMMENTS**

254 Forgery is prohibited by and defined in Tex. Penal Code § 32.21. The definition of “another” is
255 from Tex. Penal Code § 1.07(a)(5). The definition of “actor” is in Tex. Penal Code § 1.07(a)(2). The
256 definition of “harm” is in Tex. Penal Code § 1.07(a)(25). The definition of “writing” is in Tex. Penal Code §
257 32.21(a)(2). The definition of “intending to defraud or harm another” is in Tex. Penal Code § 32.21(f).

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258 **Reason for Engaging in Forgery.** The application unit of this charge was drafted on the
259 assumption that the forged writing in question was a writing that would require prosecution under Tex.
260 Penal Code § 32.21(d) or (e). Prosecution under either of these provisions includes the additional
261 complication of determining the reason the actor engaged in the act of forgery and the value of the
262 property or service they sought to acquire. If the writing in question classifies the offense as a
263 misdemeanor offense strictly under subsection (b) or the actor did not commit the forgery for the
264 purpose of obtaining property or services, the fifth element would not be needed.

265 **“Writing” in the Application Unit.** Writing is defined by Tex. Penal Code § 32.21(a)(2). The
266 definition includes, among other things, tokens, trademarks, and symbols of value. If the alleged forged
267 writing doesn’t fall under one the more concrete terms in the definition (i.e., money, coins, or credit
268 cards), whether the item is a writing within the definition may be a fact issue to be determined by a jury.

269 **CPJC 32.5 Instruction—Forgery—“Possessing” a Specifically Enumerated Forged**
270 **Writing**

271 **LAW SPECIFIC TO THIS CASE**

272 The state accuses the defendant of having committed the offense of forgery.

273 **Relevant Statutes**

274 A person commits the offense of forgery if the person possesses a writing that has been altered,
275 made, completed, executed, or authenticated so that it purports to [be the act of another who did not
276 authorize the act/have been executed at a time or place or in a numbered sequence other than was in
277 fact the case/be a copy of an original when no such original existed] with the intent to issue, transfer,
278 register the transfer of, pass, publish, or otherwise utter that writing.

279 **Definitions**

280 *Another* Texas Bar Practice Proposed Changes

281 “Another” means a person other than the actor.

282 *Actor*

283 “Actor” means a person whose criminal responsibility is in issue in a criminal action.

284 *Harm*

285 "Harm" means anything reasonably regarded as loss, disadvantage, or injury, including harm to
286 another person in whose welfare the person affected is interested.

287 *Writing*

288 *[Include one or more of the items in the following definition as dictated by the charging instrument.]*

289

290 A writing includes (1) a printing or any other method of recording information; (2) money, coins,
291 tokens, stamps, seals, credit cards, badges, and trademarks; or (3) symbols of value, right, privilege, or
292 identification.

293 *Intending to Defraud or Harm Another*

294 A person intends to defraud or harm another if it is the person’s conscious objective or desire to
295 defraud or harm another.

296 **Application of Law to Facts**

297 You must determine whether the state has proved, beyond a reasonable doubt, [five/six]
298 elements. The elements are that—

- 299 1. the defendant, in [county] County, Texas, on or about [date], possessed a [describe alleged
300 writing, e.g., check], a writing;
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- 301 2. the defendant did this with the intent to [insert specific means of utterance described in Tex.
302 Penal Code § 32.21(a)(1)(B), e.g., pass] the [describe writing];
- 303 3. the [describe writing] had been [insert specific mode of forgery contained in Tex. Penal Code
304 § 32.21(a)(1), e.g., altered] so that it appeared to be the act of [name];
- 305 4. [name] did not authorize the act; [and]
- 306 5. the defendant did this with the intent to defraud or harm [name][./; and]
307 [Include the following, if applicable.]
- 308 6. the defendant did this to obtain property or a service in an amount of [insert appropriate
309 dollar range from Tex. Penal Code § 32.21(e-1)].

310 You must all agree on elements 1, 2, 3, 4, [and 5/ 5, and 6] listed above.

311 If you all agree the state has failed to prove, beyond a reasonable doubt, one or more of
312 elements 1,2, 3, 4, [and 5/5, and 6] above, you must find the defendant “not guilty.”

313 If you all agree the state has proved, beyond a reasonable doubt, elements 1, 2, 3, 4, [and 5/5,
314 and 6] listed above, you must find the defendant “guilty.”

315 *[Insert any other instructions raised by the evidence. Then continue with the verdict form found*
316 *in CPJC 2.1, the general charge.]*

317 **COMMENTS**

318 Forgery is prohibited by and defined in Tex. Penal Code § 32.21. The definition of “another” is
319 from Tex. Penal Code § 1.07(a)(5). The definition of “actor” is in Tex. Penal Code § 1.07(a)(2). The
320 definition of “harm” is in Tex. Penal Code § 1.07(a)(25). The definition of “writing” is in Tex. Penal Code §
321 32.21(a)(2). The definition of “intending to defraud or harm another” is in Tex. Penal Code § 32.21(f).

322 **Reason for Engaging in Forgery.** The application unit of this charge was drafted on the
323 **Texas Bar Practice Proposed Changes**
324 assumption that the forged writing in question was a writing that would require prosecution under Tex.
325 Penal Code § 32.21(d) or (e). Prosecution under either of these provisions includes the additional
326 complication of determining the reason the actor engaged in the act of forgery and the value of the
327 property or service they sought to acquire. If the writing in question classifies the offense as a
328 misdemeanor offense strictly under subsection (b) or the actor did not commit the forgery for the
purpose of obtaining property or services, the sixth element would not be needed.

329 .

330 **CPJC 32.6 Instruction— Fraudulent Use or Possession of Credit Card or Debit Card**
331 **Information**

332 **LAW SPECIFIC TO THIS CASE**

333 The state accuses the defendant of having committed the offense of fraudulent use or
334 possession of credit card or debit card information.

335 **Relevant Statutes**

336 A person commits the offense of fraudulent use or possession of credit card or debit card
337 information if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or
338 uses the data stored on the digital imprint of a credit card or debit card without the consent of the
339 account holder.

340 **Definitions**

341 *Harm* Texas Bar Practice Proposed Changes

342 "Harm" means anything reasonably regarded as loss, disadvantage, or injury, including harm to
343 another person in whose welfare the person affected is interested.

344 *Counterfeit Credit or Debit Card*

345 *[Include one or more of the items in the following definition as dictated by the charging instrument.]*

346 "Counterfeit credit or debit card" means (1) a credit or debit card that purports on its face to
347 have been issued by an issuer that did not issue the card; (2) a credit or debit card that has been altered
348 to contain a digital imprint other than that which was placed on the card by the issuer; (3) a credit or
349 debit card that contains a digital imprint with account information or account holder information
350 differing from that which is printed or embossed on the card; (4) a credit or debit card that has been
351 altered to change the account information or account holder information on the face of the card from

352 that which was printed or embossed on the card by the issuer; or (5) a card, other than one issued as a
353 credit or debit card, that has been altered to contain the digital imprint of a credit card or debit card.

354 *Credit Card*

355 “Credit card” means an identification card, plate, coupon, book, number, or any other device
356 authorizing a designated person or bearer to obtain property or services on credit. The term includes
357 the number or description of the device if the device itself is not produced at the time of ordering or
358 obtaining the property or service.

359 *Debit Card*

360 “Debit card” means an identification card, plate, coupon, book, number, or any other device
361 authorizing a designated person or bearer to communicate a request to an unmanned teller machine or
362 a customer convenience terminal or obtain property or services by debit to an account at a financial
363 institution. The term includes Texas Bar Practice Proposed Changes the number or description of the device if the device itself is not
364 produced at the time of ordering or obtaining the benefit.

365 *Unmanned Teller Machine*

366 “Unmanned teller machine” means a machine, other than a telephone, capable of being
367 operated by a customer, by which a customer may communicate to a financial institution a request to
368 withdraw a benefit for himself or for another directly from the customer’s account or from the
369 customer’s account under a line of credit previously authorized by the institution for the customer.

370 *Customer Convenience Terminal*

371 “Customer convenience terminal” means an unmanned teller machine the use of which does
372 not involve personnel of the financial institution.

373 *Digital Imprint*

374 “Digital imprint” means the digital data placed on a credit or debit card or on a counterfeit
375 credit card or debit card.

376 *Intending to Defraud or Harm Another*

377 A person intends to defraud or harm another if it is the person’s conscious objective or desire to
378 defraud or harm another.

379 **Presumption of Intent to Harm or Defraud Another**

380 The law provides for a presumption that you may wish to apply in this case. This presumption
381 can apply only if you find the state has proved, beyond a reasonable doubt, that the defendant
382 possessed the five or more items of the following: (1) number and expiration date of a credit card, (2)
383 number and expiration date of a debit card, (3) data stored on the digital imprint of a credit card, or (4)
384 data stored on the digital imprint of a debit card.

385 If you find the state has proved, beyond a reasonable doubt, that the defendant possessed five
386 or more of the items mentioned above, then you may infer from this fact that the defendant possessed
387 each item without the consent of the account holder. You are not, however, required to infer or find this
388 even if you find that the defendant possessed five or more of these items.

389 If you have a reasonable doubt whether the defendant possessed five or more of the items
390 listed above, the presumption does not arise or apply. In that case, you will not consider this
391 presumption for any purpose.

392 If you apply this presumption, you may conclude that the state has proved that the defendant
393 possessed each item without the consent of the account holder. If you do decide to apply the
394 presumption to show the state has proved the defendant possessed each item without the consent of

395 the account holder, you must still decide, beyond a reasonable doubt, whether the state has proved the
396 defendant obtained, possessed, transferred, or used the data stored on the digital imprint of a credit
397 card or debit card without the consent of the account holder.

398 If you conclude you cannot apply the presumption or you choose not to apply it, you must still
399 consider whether—without reference to the presumption—the evidence proves beyond a reasonable
400 doubt that the defendant possessed each item without the consent of the account holder.

401 **Application of Law to Facts**

402 You must determine whether the state has proved, beyond a reasonable doubt, 4 [or 5]
403 elements. The elements are that—

- 404 1. the defendant, in [county] County, Texas, on or about [date], [insert specific means of
405 offense, e.g., obtained, possessed, or passed] the digital imprint of
406 *[List cards alleged in the indictment and specify whether the cards are credit cards, debit
407 cards, or digital imprints, such as the following.]*

Identify Cards Alleged in Indictment	Credit Card, Debit Card, or Digital Imprint
[identify card 1]	
[identify card 2]	
[identify card 3]	
[identify card 4]	
[identify card 5]	

408
409 *[Select one of the following.]*

- 410 2. the defendant did this without the consent of the account holder(s), [name(s)];
411 [Or]

412 2[*name*] was the account holder of the [credit/debit] card;

413 [Continue with the following.]

414 3. the defendant did this without the consent of [*name*];

415 4. the defendant did this with the intent to defraud or harm [*name(s)*]; and

416 5. the number of items [obtained/possessed/passed/[*other*]] was [less than five/five or more
417 but less than ten/ten or more but less than fifty/fifty or more].

418 You must all agree on elements 1, 2, 3, 4, and 5 listed above, but you do not have to agree on
419 the specific items listed in element 1 above as long as you all agree that the state has proved enough of
420 the listed items that the number of items totaled [five/ten/fifty] or more.

421 If you all agree the state has failed to prove, beyond a reasonable doubt, one or more of
422 elements 1,2, 3, 4, and 5 above, you must find the defendant “not guilty.”

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423 If you all agree the state has proved, beyond a reasonable doubt, elements 1, 2, 3, 4, and 5 you
424 must find the defendant “guilty.”

425 [Insert any other instructions raised by the evidence. Then continue with the verdict form
426 found in CPJC 2.1, the general charge.]

427 COMMENTS

428 The fraudulent use or possession of credit card or debit card information is prohibited by and
429 defined in Tex. Penal Code § 32.315(b). The definition of “harm” is based on Tex. Penal Code § 1.07(25).
430 The definition of “counterfeit credit card or debit card” is based on Tex. Penal Code § 32.315(a). The
431 definition of “credit card” is based on Tex. Penal Code § 32.31(a)(2). The definition of “debit card” is
432 based on Tex. Penal Code § 32.31(a)(4). The definition of “unmanned teller machine” is based on Tex.

433 Penal Code § 32.31(a)(6). The definition of “customer convenience terminal” is based on Tex. Penal
434 Code § 32.31(a)(7).

435 Texas Penal Code section 32.315(c) creates a presumption that the actor possessed each item
436 without the consent of the account holder if the actor possessed five or more debit cards, credit
437 cards, or digital imprints. Such presumptions must be treated with care as presumptions that
438 favor the state may raise constitutional concerns. For a more in-depth discussion of the
439 Committee’s position on presumptions, see CPJC 1.7.

440

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441 **CPJC 32.7 Instruction—Fraudulent Destruction, Removal, or Concealment of a Writing**

442 **LAW SPECIFIC TO THIS CASE**

443 The state accuses the defendant of having committed the offense of fraudulent destruction,
444 removal, or concealment of a writing.

445 **Relevant Statutes**

446 A person commits the offense of fraudulent destruction, removal, or concealment of a writing
447 when the person, with the intent to defraud or harm another, destroys, removes, conceals, alters,
448 substitutes, or otherwise impairs the verity, legibility, or availability of a writing, other than a
449 governmental record.

450 **Definitions**

451 *Writing*

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452 *[Include one or more of the items in the following definition as dictated by the charging instrument.]*

453 "Writing" includes (1) a printing or any other method of recording information; (2) money, coins,
454 tokens, stamps, seals, credit cards, badges, trademarks; (3) symbols of value, right, privilege, or
455 identification; or (4) universal product codes, labels, price tags, or markings on goods.

456 *Harm*

457 "Harm" means anything reasonably regarded as loss, disadvantage, or injury, including harm to
458 another person in whose welfare the person affected is interested.

459 *Intending to Defraud or Harm Another*

460 A person intends to defraud or harm another if it is the person's conscious objective or desire to
461 defraud or harm another.

462 **Application of Law to Facts**

463 You must determine whether the state has proved, beyond a reasonable doubt, three elements.

464 The elements are that—

- 465 1. the defendant in [county] County, Texas, on or about [date] [insert manner and means from
466 indictment, e.g., destroyed] a [describe writing], a writing;
- 467 2. this writing was not a governmental record; and
- 468 3. the defendant did this with intent to defraud or harm another.

469 You must all agree on elements 1, 2, and 3 listed above.

470 If you all agree the state has failed to prove, beyond a reasonable doubt, one or more of
471 elements 1, 2, and 3 above, you must find the defendant “not guilty.”

472 If you all agree the state has proved, beyond a reasonable doubt, elements 1, 2, and 3 listed
473 above, you must find the defendant “guilty.”

474 [Insert any other instructions raised by the evidence. Then continue with the verdict form found
475 in CPJC 2.1, the general charge.]

476 **COMMENTS**

477 The fraudulent destruction, removal, or concealment of a writing is prohibited by and defined in
478 Tex. Penal Code § 32.47. The definition of “writing” is based on Tex. Penal Code § 32.47(b). The definition
479 of “harm” is based on Tex. Penal Code § 1.07(25).

480 “Governmental record” is not defined anywhere in chapter 32. It is defined in Texas Penal Code
481 section 37.01 for use in that chapter, “Perjury and Other Falsification.” The Committee decided not to
482 apply it here. There is precedent for applying definitions from other offenses to the same term. See Ex

483 *parte Nuncio*, 662 S.W.3d 903, 923 (Tex. Crim. App. 2022) (applying the definition of “patently offensive” in
484 section 43.21(a)(4), defining terms for the “Obscenity” subchapter of chapter 43, to that term in the
485 definition of “obscene” under section 42.07(b)(3), part of the harassment statute). In that case, the court
486 of criminal appeals observed that both statutes were drafted with an eye toward the constitutional
487 definition of obscenity and so considered them *in pari materia*. *Ex parte Nuncio*, 662 S.W.3d at 23. Both of
488 those statutes are in title 9, “Offenses Against Public Order and Decency.” In this case, the two statutes
489 are in separate titles. Fraudulent destruction, removal, or concealment of a writing is an “Offense[]
490 Against Property,” title 7, and chapter 37, “Perjury and Other Falsification,” are “Offenses Against Public
491 Administration,” title 8. These two offenses have different punishment schemes, too. Notwithstanding
492 this, there is a strong argument that section 37.10, “Tampering with Governmental Record,” covers the
493 same conduct prohibited by section 32.47(a) and as such is the more specific—or perhaps
494 complementary—application. It would thus make sense to use the same definition of “governmental
495 record” in section 32.47(a) so that “other than a governmental record” ensures the proper offense is
496 charged.

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497

498 **CPJC 32.8 Instruction—False Statement to Obtain Property or Credit**

499 **LAW SPECIFIC TO THIS CASE**

500 The state accuses the defendant of having committed the offense of false statement to obtain
501 property or credit.

502 **Relevant Statutes**

503 A person commits the offense of false statement to obtain property or credit if the person
504 intentionally or knowingly makes a materially false or misleading written statement to obtain property
505 or credit.

506 **Definitions**

507 *Credit*

508 *[Include one or more of the items in the following definitions as dictated by the charging instrument.]*

509 “Credit” includes (1) a loan of money; (2) furnishing property or services on credit; (3) extending
510 the due date of an obligation; (4) comaking, endorsing, or guaranteeing a note or other instrument for
511 obtaining credit; (5) a line or letter of credit; (6) a credit card; and (7) a mortgage loan.

512 *Credit Card*

513 “Credit card” means an identification card, plate, coupon, book, number, or any other device
514 authorizing a designated person or bearer to obtain property or services on credit. The term includes
515 the number or description of the device if the device itself is not produced at the time of ordering or
516 obtaining the property or service.

517 *Property*

518 "Property" means real property, tangible or intangible personal property including anything
519 severed from land, or a document, including money, that represents or embodies anything of value.

520 *Service*

521 "Service" includes labor and professional service, telecommunication, public utility, and
522 transportation service, lodging, restaurant service, entertainment, and the supply of a motor vehicle or
523 other property for use.

524 *Intentionally Making a False or Misleading Statement*

525 A person acts with intent to make a false or misleading statement when the person has the
526 conscious objective or desire to make the false or misleading statement.

527 *Knowingly Making a False or Misleading Statement*

528 A person knowingly makes a false or misleading statement if the person is aware that the
529 statement they are making is false or misleading.

530 **Application of Law to Facts**

531 You must determine whether the state has proved, beyond a reasonable doubt, five elements.
532 The elements are that—

533 *[Select one of the following.]*

- 534 1. the defendant, in [county] County, Texas, on or about [date], made a materially false or
535 misleading written statement to [name];
- 536 2. the defendant's statement was [set out false statement];

537 [Or]

- 538 1. the defendant, in [county] County, Texas, on or about [date] stated in writing to [name] that
539 [insert statement];
540 2. this statement was materially false or misleading;
541 [Continue with the following.]
542 3. the defendant intended or knew the statement was false or misleading;
543 4. the defendant did this [with intent to obtain [describe property or credit]/to obtain property
544 or credit, specifically [describe property or credit if pleaded]]; and
545 5 The value of the [describe property or credit] was [insert value range].

546 You must all agree on elements 1, 2, 3, 4, and 5 listed above.

547 If you all agree the state has failed to prove, beyond a reasonable doubt, one or more of
548 elements 1, 2, 3, 4, and 5 above, you must find the defendant “not guilty.”

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549 If you all agree the state has proved, beyond a reasonable doubt, elements 1, 2, 3, 4, and 5 listed
550 above, you must find the defendant “guilty.”

551 [Insert any other instructions raised by the evidence. Then continue with the verdict form found
552 in CPJC 2.1, the general charge.]

COMMENTS

554 Making a false statement to obtain property or credit is prohibited by and defined in Tex.
555 Penal Code § 32.32. The definition of “credit” is based on Tex. Penal Code § 32.32(a).
556 The definition of “credit card” is based on Tex. Penal Code § 32.31(a)(2). The definition
557 of “property” is based on Tex. Penal Code § 31.01(5). The definition of “service” is
558 based on Tex. Penal Code § 31.01(6)