

35B N.Y. Jur. 2d Criminal Law: Principles and Offenses § 1155

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Criminal Law: Substantive Principles and Offenses

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Part Two. Specific Offenses and Defenses Thereto

XI. Offenses Involving Fraud and Bribery

B. Offenses Involving False Written Statements

2. Falsifying Business Records

b. Prosecution

§ 1155. Indictment or information charging falsification of business records

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Corporations and Business Organizations](#) 🔑2615

West's Key Number Digest, [Fraud](#) 🔑69

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[State Criminal Prosecution Against Medical Practitioner for Fraud in Connection with Claims Under Medicaid, Medicare, or Similar Welfare Program for Providing Medical Services, 79 A.L.R.6th 125](#)

[Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 A.L.R.4th 132](#)

Treatises and Practice Aids

[Charges to the Jury and Requests to Charge in a Criminal Case: New York §§ 31:19 to 31:22](#)

The evidence before a grand jury that the defendant crossed out the proper name of his company on a draft version of a confession of judgment and wrote in the name of his prior business, which no longer existed, then signed the final version of the confession of judgment in the name of the prior, nonexistent business was legally insufficient to support charging the defendant with first degree falsifying business records, but it was sufficient to support the lesser included offense of second degree falsifying business records.¹

In an indictment for first degree falsification of business records, the grand jury presentation is not required to establish commercial or property loss.²

Since this offense requires an intent to defraud, an indictment, arising out of a proceeding in which the grand jury failed to consider whether the evidence established an intent to defraud, must be dismissed.³ However, an indictment charging a police officer with first degree falsification of business records for allegedly falsifying police records may not be dismissed on the ground that the prosecution failed to present evidence to the grand jury that the defendant had the intent to deprive “another person” of any property or right since the defrauded entity need not be a person as opposed to a business entity.⁴

The counts of an indictment charging the defendants with first degree falsifying business records by causing false entries “in the business records of an enterprise,” in connection with a scheme to steal money from charities, may be dismissed where the falsified documents submitted by the defendants to obtain funding from the charities pertained to the financial condition of corporations seeking funding and not to the charitable “enterprises” named in the indictment from whom the funding was sought.⁵

Evidence of the failure of a surgeon and a nurse to make references in hospital records of a salesman’s participation in an operation sustained an indictment charging the defendants with falsifying business records with an intent to defraud and to conceal the crime of unlawful medical practice.⁶

A partnership can be charged as an entity in an indictment charging the falsifying of business records, even if there is no showing of culpability on the part of each of the partners.⁷

The officer and director of a bank holding company may properly be charged with first degree falsifying of business records where they prepared, or caused to be prepared, certain forms filed with the Federal Reserve Board and the New York State Banking Department, which allegedly falsified material information by omission to aid and conceal the crime of first degree scheme to defraud and criminal violations of the Banking Law.⁸

Observation:

A prosecution on a charge of failing to file a state income tax return may not be barred by a previous acquittal on a charge of first degree falsifying business records, even though an intent to commit the offense of failure to file, which the prosecution sought to prove as an element at the first trial, is an element of the “failure to file” offense charged in the pending indictment, where the defendant was not prosecuted in the prior case for the offense of failure to file.⁹

Cases:

Evidence that defendant, a corrections officer, intentionally omitted, when filing time cards stating that she was working continuously with no breaks during her shift, to disclose that she was operating her cell phone during her shift within confines of prison, and did so with the fraudulent intent to commit first-degree promoting prison contraband on each such occasion, was insufficient to support indictment on six counts of first-degree falsifying business records, where there was insufficient evidence to support the promotion prison contraband charges. [McKinney's Penal Law § 175.10](#). [People v. Simmons](#), 49 N.Y.S.3d 615 (County Ct. 2017).

Count of indictment charging defendant with falsifying business records in the first degree was not duplicitous; evidence presented at trial did not make plain that multiple criminal acts occurred under the count since his conduct generated a singular insurance claim file which was replete with misinformation. [People v. Reid](#), 198 A.D.3d 819, 156 N.Y.S.3d 79 (2d Dep't 2021).

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Footnotes

- ¹ [People v. Grates](#), 66 A.D.3d 1517, 886 N.Y.S.2d 537 (4th Dep't 2009).
- ² [People v. Schrag](#), 147 Misc. 2d 517, 558 N.Y.S.2d 451 (County Ct. 1990).
- ³ [People v. Barysh](#), 95 Misc. 2d 616, 408 N.Y.S.2d 190 (Sup 1978) (dismissal of indictment was appropriate where the prosecutor erred by providing the grand jury with a definition of a fraudulent practice under another statute, which did not require evidence of an intent to defraud).
- ⁴ [People v. Schrag](#), 147 Misc. 2d 517, 558 N.Y.S.2d 451 (County Ct. 1990).
- ⁵ [People v. Banks](#), 150 Misc. 2d 14, 567 N.Y.S.2d 977 (Sup 1991) (stating that to sustain such counts, the evidence before the grand jury had to show that the falsified business records evidenced or reflected the activity of the enterprises named in the counts).
- ⁶ [People v. Smithtown General Hospital](#), 93 Misc. 2d 736, 402 N.Y.S.2d 318 (Sup 1978).
- ⁷ [People v. Smithtown General Hospital](#), 92 Misc. 2d 144, 399 N.Y.S.2d 993 (Sup 1977) (partnership was charged with permitting an unauthorized person to participate in a surgery and then falsifying records hide the crime of unlawful medical practice).
- ⁸ [People v. Abedi](#), 156 Misc. 2d 904, 595 N.Y.S.2d 1011 (Sup 1993).

⁹ [Sharpton v. Turner, 964 F.2d 1284 \(2d Cir. 1992\).](#)

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