

What Is Perjury?

A witness under oath commits perjury by making a statement in a court or other proceeding that the witness knows is not true. The statement must be “material” to the subject of the proceeding, meaning that it must have some relationship to the lawsuit, investigation, or inquiry of the proceeding. All parts of this definition are important, so let’s take a closer look at each:

- Perjury only happens under oath. The witness must have vowed to tell the truth to someone who is authorized to administer the oath, such as a judge, notary public, or other official. And, the proceeding must be “competent,” that is, authorized by law. For example, a grand jury that has launched an investigation that is beyond its powers is not a competent proceeding.
- Perjury requires a statement. Silence or a refusal to give a statement is not perjury (but may lead to other charges). In addition to testimony, a statement adopted in the proceeding, as when a witness authenticates a false writing while under oath, is also perjury.
- Intent to mislead. The witness must know that the testimony is false and must give it with the intent to mislead the court.
- Only false statements are perjury. False testimony that results from confusion, lapse of memory, or mistake is not perjury. Conflicts in testimony may be perjury if one of the conflicting statements is

necessarily false (and prosecutors can prove perjury without proving which one is false).

- Inconsistent statements can lead to perjury. A witness's testimony is viewed as a whole. So, a witness who claimed he did not remember an event when questioned at one point in testimony, but who clearly recalled aspects of the event when asked later, may have committed perjury. (Inconsistency under oath is what led to Bill Clinton's impeachment.) But, where a witness's testimony is inconsistent in a way that is of no consequence in the proceeding, that is not perjury.
- Statement made in court or other proceeding. False statements made outside of official proceedings are not perjury. For example, if a witness lies to a lawyer who is taking notes in order to draft an affidavit, the witness has not committed perjury (unless she later signs the affidavit under oath with the false statement in it). Sworn, written statements submitted to courts or government agencies are statements made in a proceeding and subject to perjury laws.
- Only a "material" statement can be perjury. The false statement must be capable of influencing the proceeding – that is, it must have a relationship to the subject of the proceeding. This includes a false statement that would tend to mislead or hamper an investigation. This means that a lie, even under oath, about a subject that is not material to the proceeding is not perjury. For example, falsely bragging that "I

never update my Facebook page at work,” while testifying in a case having nothing to do with social networking at work, would not be a likely candidate for a perjury charge.

- A material statement that is superfluous to the outcome may still be perjury. Even where false testimony does not affect the outcome of a case, the lying witness may be prosecuted for perjury. For example, suppose an ex-cop is on trial for his involvement in a gambling operation. Several witnesses have testified to his involvement, but on the stand, he falsely denies any involvement. This denial would be a material statement, even though it arguably did not affect the jury’s finding of guilt (the jury had the other witnesses’ testimony to rely on).