**FOSTERING THE SALE OF STOLEN GOODS**

**Penal Law § 165.66**

**(Committed on or after November 1, 2024)**

The (*specify*) count is Fostering the Sale of Stolen Goods*.*

Under our law a person is guilty of Fostering the Sale of Stolen Goods when such person, for the purposes of financial gain, [acting alone or in concert with another person (or persons)][[1]](#footnote-2) uses any

*Select appropriate alternative(s):*

internet website [or]

application [or]

online marketplace [or]

digital service, [or]

any [other] platform or venue, [including any physical building, public or private space], or location

to offer for sale retail goods or merchandise which are stolen [or unlawfully obtained]; and

knew or should have known that such retail goods or merchandise were stolen or unlawfully obtained.

The following term used in this definition have a special meaning:

 STOLEN [OR UNLAWFULLY OBTAINED] RETAIL GOODS OR MERCHANDISE are retail goods or merchandise that have been wrongfully taken, obtained, or withheld from an owner by a person who did so with the intent to deprive another of such property or to appropriate such property to himself or herself or a third person.[[2]](#footnote-3)

 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, each of the following three elements:

1. That on or about (*date*), in the County of (County), the defendant, (*defendant's name*) [acting alone or in concert with another person (or persons)] [[3]](#footnote-4) used

*Select appropriate alternative(s):*

an internet website [or]

an application [or]

an online marketplace [or]

a digital service, [or]

any [other] platform or venue, [including any physical building, public or private space], or location

to offer for sale retail goods or merchandise which were stolen [or unlawfully obtained];

1. That the defendant did so for the purposes of financial gain; and
2. That the defendant knew or should have known that the retail goods or merchandise were stolen [or unlawfully obtained].

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

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

1. The words in brackets are normally unnecessary because: "An indictment charging a defendant as a principal is not unlawfully amended by the admission of proof and instruction to the jury that a defendant is additionally charged with acting-in-concert to commit the same crime, nor does it impermissibly broaden a defendant's basis of liability, as there is no legal distinction between liability as a principal or criminal culpability as an accomplice " *People v Rivera*, 84 N.Y.2d 766, 769 (1995). Those words accordingly need only be included here if “acting in concert” is a viable theory in the case at hand and will be included in the elements of this instruction. [↑](#footnote-ref-2)
2. See Penal Law § 155.05 [1]). If the theft is in issue, add as necessary and appropriate: A person acts with INTENT TO DEPRIVE ANOTHER OF PROPERTY OR TO APPROPRIATE PROPERTY TO HIMSELF OR HERSELF [*or* to a third person] when such person's conscious objective or purpose is: (1) to withhold the property or cause it to be withheld permanently, *or (2)* to exercise control over the property, [or to aid a third person to exercise control over it], permanently, *or* (3) to dispose of the property either for the benefit of himself or herself [*or* a third person], or, under such circumstances as to render it unlikely that an owner will recover such property. See Penal Law § 155.05 (3) and (4). [↑](#footnote-ref-3)
3. The CJI format for inserting an acting in concert instruction is “the defendant, personally, or by acting in concert with another person.” *See* Accomplice charge. Here, however, the statutory language is used. [↑](#footnote-ref-4)