

IDENTITY THEFT IN THE SECOND DEGREE
(Commits or attempts felony)
Penal Law § 190.79(3)
(Committed on or after Nov. 1, 2002)

The (specify) count is Identity Theft in the Second Degree.

Under our law, a person is guilty of Identity Theft in the Second degree when he or she knowingly, and with intent to defraud, assumes the identity of another person

Select appropriate alternative(s):

by presenting himself/herself as that person [or]
by acting as that person [or]
by using personal identifying information of that person,¹

and thereby commits or attempts to commit a felony [or acts as an accessory² to the commission of a felony].

The following terms used in that definition have a special meaning:

A person KNOWINGLY assumes the identity of another person when that person is aware that he or she has assumed the identity of that other person.³

INTENT means conscious objective or purpose. Thus, a person acts with intent to defraud when his or her conscious objective or purpose is to do so.⁴

PERSONAL IDENTIFYING INFORMATION means a

¹ See *People v. Roberts*, 31 N.Y.3d 406, 419 (2018) (“the requirement that a defendant assumes the identity of another is not a separate element of the crime. Rather, it simply summarizes and introduces the three categories of conduct through which an identity may be assumed”).

² See CJI [NY] General Applicability, Accessorial Liability.

³ See Penal Law §15.05(2).

⁴ See Penal Law §15.05(1).

person's:

[Select the appropriate alternative(s):

name,
address,
telephone number,
date of birth,
driver's license number,
social security number,
place of employment,
mother's maiden name,
financial services account number or code,
savings account number or code,
checking account number or code,
brokerage account number or code,
credit card account number or code,
debit account number or code,
automated teller machine number or code,
taxpayer identification number,
computer system password,
signature or copy of a signature,
electronic signature⁵,
unique biometric data that is a fingerprint, voice print, retinal image or iris image of another person,
telephone calling card number,
mobile identification number or code,
electronic serial number or personal identification number⁶,
or any other name, number, code or information that may be used

⁵ "Electronic signature" is a separately defined term and if in issue, the Court should charge as follows: ELECTRONIC SIGNATURE means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with intent to sign the record . See Penal Law §190.77(2)(a); State Technology Law §102(3).

⁶ "Personal identification number" is a separately defined term and if in issue, the Court should charge as follows: PERSONAL IDENTIFICATION NUMBER means any number or code which may be used alone or in conjunction with any other information to assume the identity of another person or access financial resources or credit of another person. Penal Law §190.77(2)(b).

alone or in conjunction with other such information to assume the identity of another person.^{7]}

[(Specify) is a FELONY].

NOTE: If the applicable felony is a count of the indictment, it should be charged first and the definition incorporated by reference here. Otherwise, the jury should be instructed on the definition of the applicable felony.

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) assumed the identity of (specify)

Select appropriate alternative(s):

by presenting himself/herself as that person [or]
by acting as that person [or]
by using personal identifying information of that person,;

2. That the defendant did so knowingly and with intent to defraud; and
3. That the defendant thereby committed or attempted to commit (specify felony) [or acted as an accessory to the commission of that felony].

[NOTE: If an affirmative defense does not apply, then conclude with the following two paragraphs. If the affirmative defense does apply, then omit the following two paragraphs, and insert here the affirmative defense instruction in the Additional Charges section to this article.

⁷ See Penal Law §190.77(1).

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 any one or more of those elements, you must find the defendant not guilty of this crime.