

**CRIMINAL POSSESSION OF  
PUBLIC BENEFIT CARDS  
(Committed on or after Nov. 1, 1995)**

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**CRIMINAL POSSESSION OF PUBLIC BENEFIT CARDS  
THIRD DEGREE  
(Five or more Public Benefit Cards)  
(E Felony)  
PENAL LAW § 158.40**

**CRIMINAL POSSESSION OF PUBLIC BENEFIT CARDS  
SECOND DEGREE  
(Ten or more Public Benefit Cards)  
(D Felony)  
PENAL LAW § 158.45**

**CRIMINAL POSSESSION OF PUBLIC BENEFIT CARDS  
FIRST DEGREE  
(Twenty-Five or more Public Benefit Cards)  
(C Felony)  
PENAL LAW § 158.50**

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The \_\_\_\_\_ count is Criminal Possession of Public Benefit Cards in the (*specify*) Degree.

Under our law, a person is guilty of Criminal Possession of Public Benefit Cards in the (*specify*) Degree when that person with intent to defraud, deceive or injure another, knowingly possesses (*specify statutory number*) or more public benefit cards in a name or names other than the person's own name.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "possess," "intent," "knowingly" and "public benefit card."

POSSESS means to have physical possession or otherwise to

exercise dominion or control over tangible property.<sup>1</sup>

INTENT means conscious objective or purpose. Thus, a person acts with intent to defraud, deceive or injure another when that person's conscious objective or purpose is to do so.<sup>2</sup>

A person KNOWINGLY possesses public benefit cards in a name or names other than the person's own name when that person is aware that he or she is in possession of public benefit cards in a name or names other than the person's own name.<sup>3</sup>

PUBLIC BENEFIT CARD means any medical assistance card, food stamp assistance card, public assistance card, or any other identification, authorization card or electronic access device issued by the state or social services district which entitles a person to obtain public assistance benefits under a local, state, or federal program administered by the state, its political subdivisions, or social services districts.<sup>4</sup>

*[Add If applicable:]*<sup>5</sup>

Under our law, a person who possesses five or more public benefit cards in a name or names other than his or her own is presumed to possess the same with intent to defraud, deceive or injure another.

What that means is that if the People prove beyond a reasonable doubt that the defendant possessed five or more public benefit cards in a name or names other than his or her own name, then you may, but are not required to, infer that the defendant possessed such cards with

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<sup>1</sup> See Penal Law § 10.00 (8). If constructive possession is alleged, see General Charges for a constructive possession charge.

<sup>2</sup> Penal Law § 15.05 (1).

<sup>3</sup> Penal Law § 15.05 (2).

<sup>4</sup> Penal Law § 158.00 (1)(a). For the definition of "social services district," see Social Services Law § 2 (7).

<sup>5</sup> See Penal Law § 158.00 (2).

intent to defraud, deceive or injure another; and, this presumption is rebuttable by evidence tending to show that the defendant did not possess such public benefit card or cards with intent to defraud, deceive or injure another.

In order for you to find the defendant guilty of this crime, the People are required to prove from all of the evidence in the case beyond a reasonable doubt both of the following two elements:

1. That on or about (date) in the county of (county), the defendant (defendant's name), possessed (specify statutory number) or more public benefit cards in a name or names other than the defendant's own name; and
2. The defendant did so knowingly and with intent to defraud, deceive or injure another.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Criminal Possession of Public Benefit Cards in the (specify) Degree as charged in the \_\_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or both of those elements, you must find the defendant not guilty of the crime of Criminal Possession of Public Benefit Cards in the (specify) Degree as charged in the \_\_\_\_ count.