

**IDENTITY THEFT THIRD DEGREE**  
**(A misdemeanor)**  
**(Commits crime)**  
**PENAL LAW 190.78(2)**  
**(Committed on or after Nov. 1, 2002)**

The \_\_\_\_\_ count is Identity Theft in the Third Degree.

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

by presenting himself or herself as that other person or  
by acting as that other person or  
by using personal identifying information of that other person,

and thereby commits a class A misdemeanor or higher level crime.

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: “knowingly,” “intent,” “personal identifying information” and “class A misdemeanor or higher level crime.”

A person KNOWINGLY assumes the identity of another person when that person is aware that he or she is assuming the identity of that other person.<sup>1</sup>

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.<sup>2</sup>

PERSONAL IDENTIFYING INFORMATION means

*[Select the appropriate alternative(s)]*

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<sup>1</sup>See, Penal Law §15.05(2).

<sup>2</sup>See, Penal Law §15.05(1).

a person'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 signature<sup>3</sup>,  
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 number<sup>4</sup>,

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<sup>3</sup> **“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).**

<sup>4</sup> **“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**

or any other name, number, code or information that may be used alone or in conjunction with other such information to assume the identity of another person.<sup>5]</sup>

*(Specify)* is a CLASS A MISDEMEANOR OR HIGHER LEVEL CRIME. *(Define the crime.)*

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)* 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 a class A misdemeanor or higher level crime.

*[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 charge in the Additional Charges section to this*

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**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).**

<sup>5</sup> See Penal Law §190.77(1).

*article.*

**Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Identity Theft in the Third 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 more of those elements, you must find the defendant not guilty of the crime of Identity Theft in the Third Degree as charged in the \_\_\_\_\_ count.]**