

## ADDITIONAL CHARGES

### Affirmative Defenses

#### IDENTITY THEFT, OR

#### UNLAWFUL POSSESSION OF PERSONAL IDENTIFICATION INFORMATION PENAL LAW 190.84

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 (*specify name of crime*), as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the People have proven beyond a reasonable doubt each of those elements, then you must consider the affirmative defense the defendant has raised.<sup>1</sup>

Under our law, it is an affirmative defense to a charge of (*specify name of crime*), that

*Select appropriate alternative:*

the defendant was under twenty-one years of age at the time of committing the offense and he/she used or possessed the personal identifying or identification information of another solely for the purpose of purchasing alcohol;

the defendant was under eighteen years of age at the time of committing the offense and he/she used or possessed the personal identifying or identification information of another solely for the purpose of purchasing tobacco products;

the defendant used or possessed the personal identifying or identification of another person solely for the purpose of

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<sup>1</sup>See, Penal Law §190.84.

misrepresenting his/her age to gain access to a place the access to which is restricted based on age.

Under the law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider evidence introduced by the People or by the defendant.

A preponderance of the evidence means the greater part of the believable and reliable evidence, not in terms of the number of witnesses or the length of time to present the evidence, but in terms of its quality, weight and convincing effect. For the affirmative defense to be proven by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to outweigh any evidence to the contrary.

Therefore, if you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based on your initial determination that the People have proven beyond a reasonable doubt each of the elements of (specify name of crime), you must find the defendant guilty of that crime as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not guilty of (specify name of crime), as charged in the \_\_\_\_\_ count.