

**CRIMINAL POSSESSION
OF STOLEN PROPERTY
FOURTH DEGREE
(E Felony)
(Property is Credit Card,
Debit Card, or
Public Benefit Card)
PENAL LAW 165.45(2)
(Committed on or after Nov. 1, 1995)**

The _____ count is Criminal Possession of Stolen Property in the Fourth Degree.

Under our law, a person is guilty of Criminal Possession of Stolen Property in the Fourth Degree when that person knowingly possesses stolen property, with intent to benefit himself or herself or a person other than an owner thereof or to impede the recovery by an owner thereof, and when the property consists of a credit card [*or* debit card] [*or* public benefit card].

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,” “possess,” “property,” “stolen property,” “owner,” “intent,” and ["credit card"] ["debit card"] ["public benefit card"].

A person KNOWINGLY possesses stolen property when that person is aware that he or she is in possession of property and is aware that such property is stolen.¹

[NOTE: Add if two or more stolen cards are involved:

Under our law, a person who possesses two or more stolen credit cards (*or* debit cards) (*or* public benefit cards) is presumed to know that such credit cards (*or* debit cards) (*or* public benefit

¹See Penal Law § 15.05(2).

cards) were stolen.² This means that, if the People have proven beyond a reasonable doubt that the defendant possessed two or more stolen credit cards (or debit cards) (or public benefit cards), you may, but you are not required to, infer from that fact that the defendant knew that such cards were stolen.]

POSSESS means to have physical possession or otherwise to exercise dominion and control over tangible property.³

PROPERTY means any money, personal property or thing of value.⁴

STOLEN PROPERTY is property that has 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.⁵

INTENT means conscious objective or purpose.⁶ Thus, a person acts with intent to benefit himself or herself or a person other than an owner of property or to impede the recovery of property by an owner when that person's conscious objective or purpose is to do so.

Under our law, a person who knowingly possesses stolen property is presumed to possess it with intent to benefit himself or herself or a person other than an owner thereof or to impede its

²See Penal Law § 165.55(3).

³See Penal Law § 10.00(8). Where constructive possession is alleged, insert the appropriate instruction as found in the "Additional Charges" section at the end of this chapter.

⁴See Penal Law § 155.00(1), for the full definition of "property." If the property in issue is "computer data" or a "computer program," and those terms need to be defined for the jury, see Penal Law § 156.00(2) and (3).

⁵See Penal Law § 155.05(1).

⁶See Penal Law § 15.05(1).

recovery by an owner thereof.⁷ This means that, if the People have proven beyond a reasonable doubt that the defendant knowingly possessed stolen property, you may, but you are not required to, infer from that fact that the defendant possessed it with the intent to benefit himself/herself or a person other than an owner thereof or to impede its recovery by an owner thereof.

An OWNER means a person having a right to possession of the property superior to that of the person who possesses it.⁸

[A CREDIT CARD includes any credit card, credit plate, charge plate, courtesy card or other identification card or device issued by a person to another person which may be used to obtain a cash advance (*or* loan) (*or* credit) or to purchase or lease property or services on the credit of the issuer or of the holder.]⁹

[A DEBIT CARD includes a card, plate or other similar device issued by a person to another person which may be used, without a personal identification number or code (*or* similar identification number or code) (*or* similar identification), to purchase or lease property or services. The term does not include a credit card or a check, draft or similar instrument.]¹⁰

[A 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 a social services district, which entitles a

⁷See Penal Law § 165.55(1).

⁸See Penal Law § 155.00(5), which has been modified for this crime. Also see that section for special definitions of “owner” to cover the situations (1) where the alleged owner obtained the property by theft, (2) where the alleged owner is a joint or common owner of the property, and (3) where the property is in the possession of the alleged owner but some other person has a security interest in the property.

⁹See Penal Law § 155.00(7) and General Business Law § 511(1).

¹⁰See Penal Law § 155.00(7-a) and General Business Law § 511(9).

person to obtain public assistance benefits under a local, state or federal program administered by the state, its political subdivisions or social services districts.]¹¹

[NOTE: Add if appropriate:

It is not a defense to this charge:

(Select appropriate alternative[s]:

that the person who stole the property has not been convicted, apprehended, or identified.¹²

and/or

that the defendant stole or participated in the theft of the property.¹³

and/or

that the theft of the property did not occur within this state.)]¹⁴

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)*, knowingly possessed stolen property;
2. That the defendant did so with the intent to benefit himself/herself or a person other than an owner of such property or to impede the recovery of such

¹¹See Penal Law § 155.00(7-b). For the definition of a "social services district," see Social Services Law § 2(7).

¹²See Penal Law § 165.60(1).

¹³See Penal Law § 165.60(2).

¹⁴See Penal Law § 165.60(3).

property by an owner; and

3. That the stolen property consisted of a credit card [*or* debit card] [*or* public benefit card].

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 Criminal Possession of Stolen Property in the Fourth 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 Criminal Possession of Stolen Property in the Fourth Degree as charged in the _____ count.