

**AGGRAVATED IDENTITY THEFT**  
**(PENAL LAW 190.80-a)**  
**(Committed on or after Nov. 4, 2008)**

The (specify) count is Aggravated Identity Theft.

Under our law, a person is guilty of Aggravated Identity Theft 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,<sup>1</sup>

and knows that such person is a member of the armed forces, presently deployed outside of the continental United States and

Select appropriate alternative:

thereby obtains goods, money, property or services or uses credit in the name of such member of the armed forces in an aggregate amount that exceeds five hundred dollars;

thereby causes financial loss to such member of the armed forces in an aggregate amount that exceeds five hundred dollars.

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.<sup>2</sup>

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<sup>1</sup> 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”).

<sup>2</sup> Penal Law § 15.05(2).

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>3</sup>

MEMBER OF THE ARMED FORCES means a person in the military service of the United States or the military service of the state, including but not limited to, the armed forces of the United States, the army national guard, the air national guard, the New York naval militia, the New York guard, and such additional forces as may be created by the federal or state government as authorized by law.<sup>4</sup>

[PERSONAL IDENTIFYING INFORMATION means a 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,

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<sup>3</sup> Penal Law § 15.05(1).

<sup>4</sup> Penal Law § 190.77 (2) (c).

electronic signature<sup>5</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>6</sup>,  
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>7</sup>]

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 four 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;

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<sup>5</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 (Penal Law §190.77 [2] [a]; State Technology Law §102 [3]).

<sup>6</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 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>7</sup> Penal Law §190.77 (1)

3. That the defendant knew that (*specify*) was a member of the armed forces presently deployed outside of the continental United States; and
4. *Select appropriate alternative(s):*

That the defendant obtained goods, money, property or services or used credit in the name of (*specify*) in an aggregate amount that exceeded five hundred dollars, *or*

That the defendant caused financial loss to (*specify*) in an aggregate amount that exceeded five hundred dollars.

*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 article.*

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.