

13.77A
Definition of Aggravated Identity Theft

A person commits the offense of aggravated identity theft when he knowingly

[1] uses any personal identifying information or personal identification document of another person to fraudulently obtain [(credit) (money) (goods) (services) (property)]; and the value of the [(credit) (money) (goods) (services) (property)] [(does not exceed \$300 in value) (exceeds _____ in value but does not exceed _____ in value)(exceeds \$100,000 in value)]; and

[or]

[2] uses any personal identification information or personal identification document of another with intent to commit any felony; and

[or]

[3] [(obtains) (records) (possesses) (sells) (transfers) (purchases) (manufactures)] any personal identification information or personal identification document of another with intent to commit any felony; and

[or]

[4] [(uses) (obtains) (records) (possesses) (sells) (transfers) (purchases) (manufactures)] any personal identification information or personal identification document of another knowing that such personal identification information or personal identification documents were stolen or produced without lawful authority; and

[or]

[5] [(uses) (transfers) (possesses)] document-making implements to produce false identification or false documents with knowledge that they will be used by the person or another to commit any felony; and

[or]

[6] uses any personal identification information or personal identification document of another to portray [(himself) (herself)] as that person, or otherwise, for the purpose of gaining access to any personal identification information or personal identification document of that person, without the prior express permission of that person; and

[or]

[7] uses any personal identification information or personal identification document of another for the purpose of gaining access to any record of [(the actions taken) (communications made or received) (activities or transactions)] of that person, without the prior express permission of that person; and

[or]

[8] [(uses) (possesses) (transfers)] a radio frequency identification device capable of obtaining or processing personal identifying information from a radio frequency identification (RFID) tag or transponder with knowledge that the device will be used by the person or another to commit a felony violation of State law or any violation of this Article; and

[or]

[9] in the course of applying for a building permit with a unit of local government, provides the license number of a [(roofing) (fire sprinkler)] contractor whom he or she does not intend to have perform the work on the [(roofing) (fire sprinkler)] portion of the project; and

[A] the victim is a person 60 years of age or older.

[or]

[B] the victim is a person with a disability.

[or]

[C] the action is in furtherance of the activities of an organized gang.

Committee Note

720 ILCS 5/16-30(b) (West 2021), effective January 1, 2012, as amended by P.A. 97-1109, effective January 1, 2013.

Give Instruction 13.78A.

When the affirmative defense applicable to paragraph [9] is at issue, give Instruction 13.79, “affirmative defense to identity theft”.

When paragraph [A] is used, a defense to aggravated identity theft does not exist merely because the accused reasonably believed the victim to be a person less than 60 years of age. 720 ILCS 5/16-30(b) (West 2013). *See also People v. Harris*, 2017 IL App (1st) 140777 (where statute does not assign mental state to aggravating factors, then State not required to prove defendant’s knowledge of aggravating factor).

When paragraph [C] is used, give Instruction 4.20, defining the phrase “organized gang”.

When a charge of aggravated identity theft of credit, money, goods, services, or other property exceeding a specified value is brought, the value of the credit, money, goods, services,

or other property is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value. 720 ILCS 5/16-30(d).

The bracketed language in [1] regarding the upper limit in value is used in cases where disputes about the value of the credit, money, goods, services or property fraudulently obtained support lesser included offenses and a lesser included offense instruction based upon value is given. Only when a lesser included offense instruction is given are the statutory upper limits provided in 720 ILCS 5/16-30(e)(1)(A) an issue in the case.

In *People v. Sanchez*, 2013 IL App (2d) 120445, 992 N.E.2d 148, the appellate court interpreted the phrase “knowingly used personal identifying information of another” to mean that the State must prove that the defendant knew that the personal identifying information belonged to another person. *See also People v. Hernandez*, 2012 IL App (1st) 092841, 967 N.E.2d 910 (the word “knowingly” as used in the identity theft statute applies to the “of another person” element of the offense).

In *People v. Bensen*, 2017 IL App (2d) 150085, 81 N.E.3d 613, the court construed the phrase “of another person” to mean that the personal identifying information on a credit card must identify someone other than the defendant as the cardholder. The Committee believes this applies to the offense as set forth in paragraphs [1], [2], [6] and [7].

Use both applicable bracketed numbered paragraphs [1] through [9] and the applicable bracketed lettered paragraphs [A] through [C].

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.