

**13.78**  
**Issues In Identity Theft**

To sustain the charge of identity theft, the State must prove the following proposition[s]:

[1] [*First Proposition:*] That the defendant knowingly used any [(personal identifying information) (personal identification document)] of another person to fraudulently obtain [(credit) (money) (goods) (services) (property)] [(.) (; and)

*Second Proposition:* That the value of the [(credit) (money) (goods) (services) (property)] [(did not exceed \$300 in value) (exceeded \_\_\_\_\_ in value but did not exceed \_\_\_\_\_ in value)(exceeded \$100,000 in value)] [(.) (; and)]

[or]

[2] [*First Proposition:*] That the defendant knowingly used [(personal identification) (personal identification document)] of another with the intent to commit the offense of \_\_\_\_\_ [(.) (; and)]

[or]

[3] [*First Proposition:*] That the defendant knowingly [(obtained) (recorded) (possessed) (sold) (transferred) (purchased) (manufactured)] any [(personal identification information) (personal identification document)] of another with the intent to commit the offense of \_\_\_\_\_ [(.) (; and)]

[or]

[4] [*First Proposition:*] That the defendant knowingly [(used) (obtained) (recorded) (possessed) (sold) (transferred) (purchased) (manufactured)] any [(personal identification information) (personal identification document)] of another knowing that such [(personal identification information) (personal identification document)] was [(stolen) (produced without lawful authority)] [(.) (; and)]

[or]

[5] [*First Proposition:*] That the defendant knowingly [(used) (transferred) (possessed)] document-making implements to produce [(false identification) (false documents)] with knowledge that they will be used by the person or another to commit \_\_\_\_\_ [(.) (; and)]

[or]

[6] [*First Proposition:*] That the defendant knowingly used any [(personal identification information) (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) (personal identification document)] of that person, without the prior express permission of that person [(.) (; and)]

[or]

[7] [*First Proposition:*] That the defendant knowingly used any [(personal identification information) (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] [*First Proposition:*] That the defendant knowingly [(used) (possessed) (transferred)] 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 defendant or another to commit \_\_\_\_\_ [(.) (; and)]

[or]

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

[(*Second*) (*Third*) *Proposition:* That the victim of the identity theft was an active duty member of the [(Armed Services or Reserve Forces of the United States) (Illinois National Guard)] serving in a foreign country.]

If you find from your consideration of all the evidence that [(this proposition) (each one of these propositions)] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this proposition) (any one of these propositions)] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### **Committee Note**

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

Give Instruction 13.77.

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

Insert in the blanks in the first Proposition the name of the felony.

Give the additional Proposition only when there is evidence that the victim was a member of the Armed Services or Reserve Forces of the United States or Illinois National Guard serving in a foreign country at the time of the offense.

When a charge of 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 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 applicable bracketed paragraphs and material.

The bracketed numbers [1] through [9] correspond to the alternatives of the same number in Instruction 13.77. Select the corresponding alternatives.

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

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.