13.00
THEFT

13.01
Definition Of Theft By Unauthorized Control Of Property Not Exceeding $300 In Value

A person commits the offense of theft when he knowingly [(obtains) (exerts)] unauthorized control over property and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C) (1991)).

Give Instruction 13.02.

Bracketed alternatives should be selected so that the instruction is no broader than the charging document. If an information charges “obtains” rather than “exerts,” then only “obtains” should be utilized. When the pleading is stated in the alternative (e.g. “obtains or exerts”), the instruction should be in the alternative unless the evidence fails to justify a particular alternative. The Committee takes no position on whether alternative pleading is proper under Chapter 720, Section 16-1.

When defendant is not also charged with theft of property exceeding $300 in value, there is no need to mention the value of the property in this instruction, the issues instruction (Instruction 13.02), the concluding instruction (Instruction 26.01), or the verdict forms (Instructions 26.02 and 26.05). However, when the defendant is also charged with theft of property exceeding $300 in value, this instruction and each of the others specified in this paragraph should be modified by identifying this charge as “theft of property not exceeding $300 in value,” instead of as simply “theft.”

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Use applicable paragraphs and bracketed material.

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.

13.02
Issues In Theft By Unauthorized Control Of Property Not Exceeding $300 In Value

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property.

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property.

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property.

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

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C) (1991)).

Give Instruction 13.01.

Choose from among the three options for the Third Proposition that option which is reflective of the charge against the defendant.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Insert in the blank the name of the owner.

Use applicable bracketed material.

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. See Instruction 5.03.

13.03
Definition Of Theft By Unauthorized Control Of Property Exceeding $300 In Value

A person commits the offense of theft of property exceeding $300 in value when that person [(obtains) (exerts)] unauthorized control over property exceeding $300 in value and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(c) (1991)).

Give Instruction 13.04.

Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding $300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding $300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440.

See Committee Note to Instruction 13.01.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Use applicable paragraphs and bracketed material.

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.

13.04
Issues In Theft By Unauthorized Control Of Property Exceeding $300 In Value

To sustain the charge of theft of property exceeding $300 in value, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property;

and

Fourth Proposition: That the property in question exceeded $300 in value.

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

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(c) (1991)).

Give Instruction 13.03.

Choose from among the three options for the Third Proposition that option which is reflective of the charge against the defendant.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Insert in the blank the name of the owner.

Use applicable bracketed material.

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. See Instruction 5.03.

13.05
Definition Of Subsequent Theft Offense

Committee Note

Effective January 1, 1988, Chapter 38, Section 16-1(b)(2), was amended to provide that a prior conviction used to enhance the offense of theft of property not exceeding $300 in value from a Class A misdemeanor to a Class 4 felony is not an element of that offense and should not be disclosed to the jury unless otherwise permitted by issues properly raised during trial. Accordingly, this instruction has been rescinded, and Instruction 13.01 should be used instead. See P.A. 85-691 and P.A. 85-1030.

13.06
Issues In Subsequent Theft Offense

Committee Note

This instruction has been rescinded. See Committee Note to Instruction 13.05. Give Instruction 13.02.

13.07
Definition Of Theft Of A Firearm

A person commits the offense of theft of a firearm when he knowingly [(obtains) (exerts)] unauthorized control over a firearm, and

[1] intends to deprive the owner permanently of the use or benefit of the firearm.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the firearm in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the firearm knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(b)(3) (1991)).

Give Instruction 13.08.

Theft of a firearm is a Class 4 felony. A second theft of a firearm is a Class 3 felony. The Committee has not prepared instructions for "Second Theft of a Firearm." Such a charge is too rare to justify inclusion in these Pattern Instructions. The Committee takes no position on whether the prosecution must prove as an element of the Class 3 felony the prior conviction of theft of a firearm.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Use applicable paragraphs and bracketed material.

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.

13.08
Issues In Theft Of A Firearm

To sustain the charge of theft of a firearm, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner permanently of the use or benefit of the property in question;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner permanently of such use or benefit;

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that the owner will thereby probably be deprived permanently of its use or benefit;

and

Fourth Proposition: That the property in question was a firearm.

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

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(b)(3) (1991)).

Give Instruction 13.07.

Give the definition in Chapter 720, Section 83-1.1 when there is a question as to whether a firearm was involved.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Insert in the blank the name of the owner.

Use applicable bracketed material.

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. See Instruction 5.03.

13.09
Definition Of Theft From The Person

A person commits the offense of theft from the person when he knowingly [(obtains) (exerts)] unauthorized control over the property by taking said property from the person of another and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(4) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(b)(4) (1991)).

Give Instruction 13.10.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Use applicable paragraphs and bracketed material.

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.

13.10
Issues In Theft From The Person

To sustain the charge of theft from the person, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner permanently of the use or benefit of the property in question;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of such use or benefit;

and

Fourth Proposition: That the defendant took the property in question from the person of ____.

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

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(4) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(b)(4) (1991)).

Give Instruction 13.09.

Insert in the blanks the name of the owner.

Use applicable bracketed material.

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. See Instruction 5.03.

13.11
Definition Of Theft By Unauthorized Control Of Property Exceeding $10,000 In Value

A person commits the offense of theft of property exceeding $10,000 in value when that person [(obtains) (exerts)] unauthorized control over property exceeding $10,000 in value and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(5) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(b)(5) (1991)).

Give Instruction 13.12.

See Committee Note to Instruction 13.01.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

P.A. 85-1030, effective July 1, 1988, amended Section 16-1 to provide that theft of property exceeding $10,000 in value and not exceeding $100,000 in value is a Class 2 felony. See also P.A. 85-1440.

Use applicable paragraphs and bracketed material.

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.

13.12
Issues In Theft By Unauthorized Control Of Property Exceeding $10,000 In Value

To sustain the charge of theft of property exceeding $10,000 in value, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property;

and

Fourth Proposition: That the property in question exceeded $10,000 in value.

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

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(5) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(b)(5) (1991)).

Give Instruction 13.11.

Choose from among the three options for the Third Proposition that option which is reflective of the charge against the defendant.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Insert in the blank the name of the owner.

Use applicable bracketed material.

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. See Instruction 5.03.

13.13
Definition Of Theft By Unauthorized Control Of Property Exceeding $100,000 In Value

A person commits the offense of theft of property exceeding $100,000 in value when that person [(obtains) (exerts)] unauthorized control over property exceeding $100,000 in value and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(6) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(b)(6) (1991)).

Give Instruction 13.14.

See Committee Note to Instruction 13.01.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

P.A. 85-1030, effective July 1, 1988, amended Section 16-1 to provide that theft of property exceeding $100,000 in value is a Class 1 felony. See also P.A. 85-1440.

Use applicable paragraphs and bracketed material.

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.

13.14
Issues In Theft By Unauthorized Control Of Property Exceeding $100,000 In Value

To sustain the charge of theft of property exceeding $100,000 in value, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property;

and

Fourth Proposition: That the property in question exceeded $100,000 in value.

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

Committee Note

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(6) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(1)(A), (B), and (C), and 16-1(b)(6) (1991)).

Give Instruction 13.13.

Choose from among the three options for the Third Proposition that option which is reflective of the charge against the defendant.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Insert in the blank the name of the owner.

Use applicable bracketed material.

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. See Instruction 5.03.

13.15
Definition Of Theft By Deception Of Property Not Exceeding $300 In Value

A person commits the offense of theft when he by deception knowingly obtains control over property and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

720 ILCS 5/16-1(a)(2)(A), (B), and (C) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(2)(A), (B), and (C) (1991)).

Give Instruction 13.16.

When the defendant is not also charged with theft of property exceeding $300 in value, there is no need to mention the value of the property in this instruction, the issues instruction (Instruction 13.16), the concluding instruction (Instruction 26.01), or the verdict forms (Instructions 26.02 and 26.05). However, when the defendant is also charged with theft of property exceeding $300 in value, this instruction and each of the others specified in this paragraph should be modified by identifying this charge as “theft of property not exceeding $300 in value,” instead of as simply “theft.”

Other definitions may be appropriate. See Instructions 13.33 through 13.33E.

Use applicable paragraphs and bracketed material.

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.

13.16
Issues In Theft By Deception Of Property Not Exceeding $300 In Value

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant by deception knowingly obtained control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property.

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property.

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property.

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

Committee Note

720 ILCS 5/16-1(a)(2)(A), (B), and (C) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(2)(A), (B), and (C) (1991)).

Give Instruction 13.15.

Choose from among the three options for the Third Proposition that option which is reflective of the charge against the defendant.

When the defendant is not also charged with theft of property exceeding $300 in value, there is no need to mention the value of the property in the definitional instruction (Instruction 13.15), this instruction, the concluding instruction (Instruction 26.01), or the verdict forms (Instructions 26.02 and 26.05). However, when the defendant is also charged with theft of property exceeding $300 in value, this instruction and each of the others specified in this paragraph should be modified by identifying this charge as “theft of property not exceeding $300 in value,” instead of as simply “theft.”

Insert in the blank the name of the owner.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Use applicable bracketed material.

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. See Instruction 5.03.

13.17
Definition Of Theft By Deception Of Property Exceeding $300 In Value

A person commits the offense of theft when he by deception knowingly obtains control over property exceeding $300 in value and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefits.

Committee Note

720 ILCS 5/16-1(a)(2)(A), (B), and (C), and 16-1(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(2)(A), (B), and (C), and 16-1(c) (1991)).

Give Instruction 13.18.

P.A. 85-691, effective January 1, 1988, amended Section 16-1 to provide that when a charge of theft of property exceeding $300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding $300. See P.A. 85-1440.

Other definitions may be appropriate. See Instructions 13.33 through 13.33E.

See Committee Note to Instruction 13.01.

Use applicable paragraphs and bracketed material.

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.

13.18
Issues In Theft By Deception Of Property Exceeding $300 In Value

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant by deception knowingly obtained control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property;

and

Fourth Proposition: That the property in question exceeded $300 in value.

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

Committee Note

720 ILCS 5/16-1(a)(2)(A), (B), and (C), and 16-1(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(2)(A), (B), and (C), and 16-1(c) (1991)).

Give Instruction 13.17.

Choose from among the three options for the Third Proposition that option which is reflective of the charge against the defendant.

Other definitions may be appropriate. See Instructions 13.33 through 13.33E.

Insert in the blank the name of the owner.

Use applicable bracketed material.

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. See Instruction 5.03.

13.19
Definition Of Theft By Deception Of Property Having A Value Of $5,000 Or More From A Victim 60 Years Of Age Or Older

A person commits the offense of theft when he by deception knowingly obtains control over property having a value of $5,000 or more from a person sixty years of age or older and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

720 ILCS 5/16-1(a)(2)(A), (B), and (C), and 16-1(b)(7) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(2)(A), (B), and (C), and 16-1(b)(7) (1991)).

Give Instruction 13.20.

P.A. 85-753, effective January 1, 1988, amended Chapter 720, Section 16-1 to provide that theft by deception of property valued at $5,000 or more from a victim 60 years of age or older is a Class 2 felony, instead of a Class 3 felony.

Even though the Committee decided to include this instruction, the Committee takes no position on the question of whether either of these enhancing factors is an issue to be resolved by the jury. See People v. Hicks, 119 Ill.2d 29, 518 N.E.2d 148, 115 Ill.Dec. 623 (1987); People v. Mays, 80 Ill.App.3d 340, 399 N.E.2d 718, 35 Ill.Dec. 652 (3d Dist.1980).

Other definitions may be appropriate. See Instruction 13.33 through 13.33E.

Use applicable paragraphs and bracketed material.

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.

13.20
Issues In Theft By Deception Of Property Having A Value Of $5,000 Or More From A Victim 60 Years Of Age Or Older

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That ____ was the owner of the property in question; and

Second Proposition: That the defendant by deception knowingly obtained control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property;

and

Fourth Proposition: That the property in question had a value of $5,000 or more; and

Fifth Proposition: That ____ was 60 years of age or older.

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

Committee Note

720 ILCS 5/16-1(a)(2)(A), (B), and (C), and 16-1(b)(7) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(2)(A), (B), and (C), and 16-1(b)(7) (1991)).

Give Instruction 13.19.

Insert in the blanks the name of the owner.

Use applicable bracketed material.

13.21
Definition Of Theft By Threat--Misdemeanor

A person commits the offense of theft when he by threat knowingly obtains control over property of the owner and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such a manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that the owner will thereby probably be permanently deprived of its use or benefit.

Committee Note

720 ILCS 5/16-1(a)(3)(A), (B), and (C) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(3)(A), (B), and (C) (1991)).

Give Instruction 13.22.

Theft by threat can be a felony if the value of the property exceeds $300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding $300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding $300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin "A person commits the offense of theft of property in excess of $300 when he by threat knowingly obtains control over property of the owner and . . . ."

Other definitions may be appropriate. See Instructions 13.33 through 13.33D and Instruction 13.33F.

Use applicable paragraphs and bracketed material.

See Committee Note to Instruction 13.01.

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.

13.22
Issues In Theft By Threat--Misdemeanor

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That ____ was the owner of the ____ in question; and

Second Proposition: That the defendant by threat knowingly obtained control over the ____; and

Third Proposition: That the defendant intended to deprive ____ permanently of the use or benefit of the ____.

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the ____ in such manner as to deprive the owner permanently of such use or benefit.

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the ____ knowing that ____ will thereby probably be deprived permanently of its use or benefit.

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

Committee Note

720 ILCS 5/16-1(a)(3)(A), (B), and (C) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(3)(A), (B), and (C) (1991)).

Give Instruction 13.21.

Theft by threat can be a felony if the value of the property exceeds $300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding $300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding $300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin "To sustain the charge of theft of property in excess of $300, the State must prove . . . ."

See Committee Note to Instruction 13.01.

Insert in the appropriate blanks the name of the owner and the property description.

Use applicable bracketed material.

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. See Instruction 5.03.

13.23
Definition Of Theft By Obtaining Control Over Stolen Property--Misdemeanor

A person commits the offense of theft when he knowingly obtains control over stolen property [(knowing the property to have been stolen) (under such circumstances as would reasonably induce him to believe the property was stolen)], and he

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that the owner will thereby probably be permanently deprived of its use or benefit.

Committee Note

720 ILCS 5/16-1(a)(4)(A), (B), and (C) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(4)(A), (B), and (C) (1991)).

Give Instruction 13.24.

Theft by obtaining control over stolen property can be a felony if the value of the property exceeds $300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding $300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding $300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin "A person commits the offense of theft of property in excess of $300 when he . . . ."

See Committee Note to Instruction 13.01.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D and Instruction 13.33G.

Use applicable paragraphs and bracketed material.

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.

13.24
Issues In Theft By Obtaining Control Over Stolen Property--Misdemeanor

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That ____ was the owner of the ____ in question; and

Second Proposition: That the defendant knowingly obtained control over the ____ in question; and

Third Proposition: That the defendant knew the ____ had been stolen by another;

[or]

Third Proposition: That the defendant obtained control under such circumstances as would reasonably induce him to believe the ____ was stolen;

and

Fourth Proposition: That the defendant intended to deprive the owner permanently of the use or benefit of ____.

[or]

Fourth Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the ____ in such manner as to deprive ____ permanently of the use or benefit.

[or]

Fourth Proposition: That the defendant [(used) (concealed) (abandoned)] the ____ knowing that the owner will thereby probably be deprived permanently of its use or benefit.

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

Committee Note

720 ILCS 5/16-1(a)(4)(A), (B), and (C) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1(a)(4)(A), (B), and (C) (1991)).

Give Instruction 13.23.

Theft by obtaining control over stolen property can be a felony if the value of the property exceeds $300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding $300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding $300. See P.A. 85-

691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin "To sustain the charge of theft of property in excess of $300, the State must prove . . . ."

Insert in the appropriate blanks the name of the owner and the property description.

Use applicable bracketed material.

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. See Instruction 5.03.

13.25
Definition Of Theft Of Lost Or Mislaid Property

A person commits the offense of theft of lost or mislaid property when he obtains control over lost or mislaid property, and

[1] [([(knows) (learns)] the identity of the owner) ([(knows) (is aware) (learns)] of a reasonable means of identifying the owner)]; and

[2] fails to take reasonable measures to restore the property to the owner; and

[3] intends to deprive the owner permanently of the use or benefit of the property.

Committee Note

720 ILCS 5/16-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-2 (1991)).

Give Instruction 13.26.

See Committee Note to Instruction 13.01.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Use applicable paragraphs and bracketed material.

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.

13.26
Issues In Theft Of Lost Or Mislaid Property

To sustain the charge of theft, the State must prove the following propositions:
First Proposition: That ____ was the owner of the ____ in question; and
Second Proposition: That the ____ was lost or mislaid; and
Third Proposition: That the defendant obtained control over the ____; and
Fourth Proposition: That the defendant [(knew) (learned)] the identity of the owner;

[or]

Fourth Proposition: That the defendant [(knew) (was aware) (learned)] of a reasonable means of identifying the owner;

and

Fifth Proposition: That the defendant failed to take reasonable measures to restore the ____ to ____; and
Sixth Proposition: That the defendant intended to deprive ____ permanently of the use or benefit of the ____.
If you find from your consideration of all the evidence that 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 any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-2 (1991)).

Give Instruction 13.25.

See Committee Note to Instruction 13.01.

Insert in the appropriate blanks the name of the owner and the property description.

Use applicable bracketed material.

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. See Instruction 5.03.

13.27
Definition Of Theft Of Labor, Services, Or Use Of Property

A person commits the offense of theft when he obtains the temporary use of [(property) (labor) (services)] of another available only for hire

[1] by means of [(threat) (deception)].

[or]

[2] knowing that such use is without the consent of the person providing the [(property) (labor) (services)].

Committee Note

720 ILCS 5/16-3(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-3(a) (1991)).

Give Instruction 13.28.

See Committee Note to Instruction 13.01.

Other definitions may be appropriate. See Instructions 13.33, 13.33A, and 13.33C through 13.33F.

Use applicable paragraphs and bracketed material.

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.

13.28
Issues In Theft Of Labor, Services, Or Use Of Property

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That ____ was the owner of the [(property) (labor) (services)] in question; and

Second Proposition: That the [(property) (labor) (services)] [(was) (were)] available only for hire; and

Third Proposition: That the defendant obtained temporary use by means of [(threat) (deception)] of the [(property) (labor) (services)] in question.

[or]

Third Proposition: That the defendant knew that such use was without the consent of the person providing the [(property) (labor) (services)].

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

Committee Note

720 ILCS 5/16-3(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-3(a) (1991)).

Give Instruction 13.27.

This instruction has been altered in substance from that contained in the original volume of these instructions. The Committee believes that the State must prove, in addition to the first two propositions, either that the property, labor, or services were obtained by threat or deception, *or* that the defendant knew that his use was without consent. If knowledge of non-consent existed, threat or deception need not be proved. Theft of services frequently does not involve either deception or threat.

See Committee Notes to Instructions 13.01 and 13.27.

Use applicable bracketed material.

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. See Instruction 5.03.

13.29
Definition Of Theft Of Rented Or Leased Personal Property

A person commits the offense of theft when he [(rents or leases [(a motor vehicle) (a ____ exceeding $500 in value)]) (obtains a motor vehicle through a "driveaway" service mode of transportation)] under an agreement in writing which provides for the return of the [(vehicle) (____)] to a particular place at a particular time, and thereafter, without good cause, wilfully fails to return the [(vehicle) (____)] to that place within the time specified, and is thereafter served or sent a written demand mailed to the last known address, made by certified mail return receipt requested, to return such [(vehicle) (____)] within 3 days from the mailing of the written demand, and who, without good cause, wilfully fails to return the [(vehicle) (____)] to any place of business of the lessor within such period.

Committee Note

720 ILCS 5/16-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §16-3(b) (1991)), amended by P.A. 82-288, effective August 1, 1981; P.A. 83-1048, effective July 1, 1984; and P.A. 84-800, effective January 1, 1986.

Give Instruction 13.30.

Use applicable bracketed material.

Insert in the blank the type of personal property if other than a motor vehicle.

See Committee Note to Instruction 13.01.

Give Instruction 23.43B, defining "motor vehicle", when there is a question as to whether the object leased was a motor vehicle if the charging document alleges only that the defendant obtained and did not return a motor vehicle.

13.30
Issues In Theft Of Rented Or Leased Personal Property

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That the defendant [(rented or leased [(a motor vehicle) (a ____ exceeding $500 in value)]) (obtained a motor vehicle through a "driveaway" mode of transportation)] under an agreement in writing which provided for the return of the [(vehicle) (____)] to a particular place at a particular time; and

Second Proposition: That the defendant without good cause wilfully failed to return the [(vehicle) (____)] to that place within the time specified; and

Third Proposition: That the defendant thereafter was served or sent a written demand mailed to the last known address, made by certified mail return receipt requested, to return such [(vehicle) (____)] within 3 days from the mailing of the written demand; and

Fourth Proposition: That the defendant without good cause wilfully failed to return the [(vehicle) (____)] to any place of business of the lessor within such period.

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

Committee Note

720 ILCS 5/16-3(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-3(b) (1991)).

Give Instruction 13.29.

See Committee Notes to Instructions 13.01 and 13.29.

Insert in the blank the type of personal property if other than a motor vehicle.

Use applicable bracketed material.

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. See Instruction 5.03.

13.31
Definition Of Unlawful Subleasing Of A Motor Vehicle

A person commits the offense of unlawful subleasing of a motor vehicle when he [(intentionally) (knowingly) (recklessly)]

[1] [(obtains) (exercises control over)] a motor vehicle and then [(sells) (transfers) (assigns) (leases)] the motor vehicle to another person without first obtaining written authorization from the [(secured creditor) (lessor) (lienholder)] for the [(sale) (transfer) (assignment) (lease)] and receives [(compensation) (consideration)] for the [(sale) (transfer) (assignment) (lease)] of the motor vehicle when he is not a party to a [(lease contract) (conditional sale contract) (security agreement)] which transfers any right of interest in the motor vehicle.

[or]

[2] [(assists) (causes) (arranges)] the [(actual) (purported)] [(sale) (transfer) (assignment) (lease)] of a motor vehicle to another person without first obtaining written authorization from the [(secured creditor) (lessor) (lienholder)] for the [(sale) (transfer) (assignment) (lease)] and receives [(compensation) (consideration)] for [(assisting) (causing) (arranging)] the [(sale) (transfer) (assignment) (lease)] of the motor vehicle when he is not a party to a [(lease contract) (conditional sale contract) (security agreement)] which transfers any right of interest in the motor vehicle.

Committee Note

625 ILCS 5/6-305.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §6-305.1 (1991)), added by P.A. 86-748, effective July 1, 1990.

Give Instruction 13.32.

Use the mental state that conforms to the allegation in the charge. See People v. Grant, 101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Section 6-305.1 sets forth an exception to the offense of unlawful subleasing of a motor vehicle. The statute does not apply when the defendant is acting upon the request of his employer. If the defendant relies upon this exception, it will be necessary to give additional instructions.

13.32
Issues In Unlawful Subleasing Of A Motor Vehicle

To sustain the charge of unlawful subleasing of a motor vehicle, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] [(obtained) (exercised control)] over a motor vehicle; and

Second Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] [(sold) (transferred) (assigned) (leased)] the motor vehicle to another person; and

Third Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] did not obtain written authorization from the [(secured creditor) (lessor) (lienholder)] for the [(sale) (transfer) (assignment) (lease)]; and

Fourth Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] received [(compensation) (consideration)] for the [(sale) (transfer) (assignment) (lease)] of the motor vehicle; and

Fifth Proposition: That the defendant was not a party to a [(lease contract) (conditional sale contract) (security agreement)] which transferred any right of interest in the motor vehicle.

[or]

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] [(assisted) (caused) (arranged)] the [(actual) (purported)] [(sale) (transfer) (assignment) (lease)] of a motor vehicle to another person; and

Second Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] did not obtain written authorization from the [(secured creditor) (lessor) (lienholder)] for the [(sale) (transfer) (assignment) (lease)]; and

Third Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] received [(compensation) (consideration)] for [(assisting) (causing) (arranging)] the [(sale) (transfer) (assignment) (lease)] of the motor vehicle; and

Fourth Proposition: That the defendant was not a party to a [(lease contract) (conditional sale contract) (security agreement)] which transfers any right of interest in the motor vehicle.

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

Committee Note

625 ILCS 5/6-305.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, §6-305.1 (1991)), added by P.A. 86-748, effective July 1, 1990.

Give Instruction 13.31.

Use the first set of propositions if this offense is charged under paragraph (1) of Section 6-305.1(a); use the second set of propositions if this offense is charged under paragraph (2) of Section 6-305.1(a).

Use the mental state that conforms to the allegation in the charge. See People v. Grant,

101 Ill.App.3d 43, 427 N.E.2d 810, 56 Ill.Dec. 478 (1st Dist.1981).

Section 6-305.1 sets forth an exception to the offense of unlawful subleasing of a motor vehicle. The statute does not apply when the defendant is acting upon the request of his employer. If the defendant relies on this exception, it will be necessary to give additional instructions.

13.33
Definition Of Property

The word "property" means anything of value. Property includes ____.

Committee Note

720 ILCS 5/15-1, 16D-2(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-1, 16D-2(d) (1991)).

Insert in the blank the applicable item from Chapter 720, Section 15-1 or Chapter 720, Section 16D-2(d).

13.33A
Definition Of Owner

The word "owner" means a person, other than the defendant, who has possession of or any other interest in the property involved [even though such interest or possession is unlawful], and without whose consent the defendant has no authority to exert control over the property.

Committee Note

720 ILCS 5/15-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-2 (1991)).

Use bracketed material when an issue arises relating to whether the person from whom the property was taken had lawful possession of the property.

13.33B
Definition Of Permanently Deprive

The phrase "permanently deprive" means to
[1] defeat all recovery of the property by the owner.

[or]

[2] deprive the owner permanently of the beneficial use of the property.

[or]

[3] retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return.

[or]

[4] sell, give, pledge, or otherwise transfer any interest in the property or subject it to the claim of a person other than the owner.

Committee Note

720 ILCS 5/15-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-3 (1991)).

Use applicable paragraphs.

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.

13.33C
Definition Of Obtain

The word "obtain" means

[1] to bring about a transfer of interest or possession in property to [(the defendant) (another)].

[or]

[2] to secure the performance of labor or services.

Committee Note

720 ILCS 5/15-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-7 (1991)).

Use applicable paragraphs and bracketed material.

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.

13.33D
Definition Of Obtains Or Exerts Control

The phrase "[(obtains) (exerts)] control" includes, but is not limited to, the [(taking of) (carrying away of) (sale of) (conveyance of) (transfer of title to) (interest in) (possession of)] property.

Committee Note

720 ILCS 5/15-8 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-8 (1991)).

Use applicable bracketed material.

13.33E
Definition Of Deception

The word “deception” means to knowingly

[1] create or confirm another's impression which is false and which the defendant does not believe to be true.

[or]

[2] fail to correct a false impression which the defendant previously has created or confirmed.

[or]

[3] prevent another from acquiring information pertinent to the disposition of the property involved.

[or]

[4] sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record.

[or]

[5] promise performance which the defendant does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the owner did not intend to perform.

[or]

[6] misrepresents or conceals a material fact relating to the terms of a contract or agreement entered into with [(an elderly) (a disabled)] person or the existing or pre-existing condition of any of the property involved in such contract or agreement.

[or]

[7] uses or employs any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit [(an elderly) (a disabled)] person to enter into a contract or agreement.

Committee Note

720 ILCS 5/15-4 and 16-1.3(b)(4) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-4 and 16-1.3(b)(4) (1991)), added by P.A. 86-153, effective January 1, 1990.

Although paragraphs [1] through [7] can be used whenever financial exploitation of an elderly or disabled person is charged under Section 16-1.3(a), paragraphs [6] and [7] can be used *only* for financial exploitation of an elderly or disabled person.

See Instructions 13.35 and 13.36.

Use applicable paragraphs and bracketed material.

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.

13.33F
Definition Of Threat

The word "threat" means a menace, however communicated, to
[1] inflict physical harm on the person threatened or any other person or on property.

[or]

[2] subject any person to physical confinement or restraint.

[or]

[3] commit any criminal offense.

[or]

[4] accuse any person of a criminal offense.

[or]

[5] expose any person to hatred, contempt, or ridicule.

[or]

[6] harm the credit or business repute of any person.

[or]

[7] reveal any information sought to be concealed by the person threatened.

[or]

[8] take action as an official against anyone or anything, or withhold official action, or cause such action or withholding.

[or]

[9] bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the group which the person making the threat purports to represent.

[or]

[10] testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

Committee Note

720 ILCS 5/15-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-5 (1991)).

Paragraphs [1] through [10] are not all-inclusive. If the subject of the threat is other than that described, prepare an appropriate description. See Chapter 720, Section 15-5(k).

Use applicable paragraphs.

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.

13.33G
Definition Of Stolen Property

The term "stolen property" means property over which control has been obtained by theft.

Committee Note

720 ILCS 5/15-6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-6 (1991)).

13.34
Inference Arising From Exclusive Possession Of Recently Stolen Property

Committee Note

In preparing this Fourth Edition, the Committee reexamined the instruction on this subject included in the Second Edition, and the Committee continues to recommend, as it did in the Committee Note in the Second Edition and again in the Third Edition, that no instruction be given on this subject, either in a theft case or elsewhere. The Committee believes that particular types of evidence should not be singled out, but should be left to the argument of counsel. Instruction 1.03 tells the jury that attorneys may argue reasonable inferences from the evidence. The Committee believes that any possible benefit from giving this instruction is outweighed by problems resulting from its use.

13.34A
Part Interest In Property No Defense

It is not a defense to the charge of theft that the defendant has an interest in the property when another person also has an interest in the same property to which the defendant is not entitled.

Committee Note

720 ILCS 5/16-4(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-4(a) (1991)).

Give this instruction when a defendant claims an interest in the property.

13.35
Definition Of Financial Exploitation Of An Elderly Or Disabled Person

A person commits the offense of financial exploitation of [(an elderly) (a disabled)] person when he stands in a position of trust and confidence with the [(elderly) (disabled)] person, and he knowingly and by [(deception) (intimidation)] obtains control over the [(elderly) (disabled)] person's property with the intent to permanently deprive the [(elderly) (disabled)] person of the use, benefit, or possession of his property[, and the value of the property is [(more than $300) ($5,000 or more) ($100,000 or more)]].

Committee Note

720 ILCS 5/16-1.3(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1.3(a) (1991)), added by P.A. 86-153, effective January 1, 1990.

Give Instructions 13.36 and 13.35D.

Also give either Instruction 13.35A or 13.35B.

Also give either Instruction 13.33E or 13.35C.

The Committee has included the value of the property as an issue to be resolved by the jury because Section 16-1.3(a) sets forth different penalties depending on the value of the property in question. Accordingly, the Committee has included the bracketed material at the end of the paragraph which should be given when the value of the property exceeds $300.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin “A person commits the offense of financial exploitation of a disabled person in excess of $300 when he . . . .”

Use applicable bracketed material.

13.35A
Definition Of Elderly Person--Offense Of Financial Exploitation

The term "elderly person" means a person 60 years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that such person is incapable of avoiding or preventing the commission of the offense.

Committee Note

720 ILCS 5/16-1.3(b)(1) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1.3(b)(1) (1991)), added by P.A. 86-153, effective January 1, 1990.

Use this definition only when the offense of financial exploitation of an elderly person is charged.

13.35B
Definition Of Disabled Person--Offense Of Financial Exploitation

The term "disabled person" means a person who suffers from a permanent physical or mental impairment resulting from disease, injury, functional disorder, or congenital condition which renders such person incapable of avoiding or preventing the commission of the offense.

Committee Note

720 ILCS 5/16-1.3(b)(2) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1.3(b)(2) (1991)), added by P.A. 86-153, effective January 1, 1990.

Use this definition only when the offense of financial exploitation of a disabled person is charged.

13.35C
Definition Of Intimidation--Offense Of Financial Exploitation

The word "intimidation" means the communication to [(an elderly) (a disabled)] person that he shall be deprived of food and nutrition, shelter, prescribed medication, or medical care and treatment.

Committee Note

720 ILCS 5/16-1.3(b)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1.3(b)(3) (1991)), added by P.A. 86-153, effective January 1, 1990.

Use this definition only when the offense of financial exploitation of an elderly or disabled person is charged.

Use applicable bracketed material.

13.35D
Definition Of Trust And Confidence--Offense Of Financial Exploitation

A person stands in a position of trust and confidence with [(an elderly) (a disabled)] person when he

[1] is a parent, spouse, adult child, or other relative by blood or marriage of the elderly or disabled person.

[or]

[2] is a joint tenant or tenant in common with the [(elderly) (disabled)] person.

[or]

[3] has a legal or fiduciary relationship with the [(elderly) (disabled)] person.

Committee Note

720 ILCS 5/16-1.3(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1.3(c) (1991)), added by P.A. 86-153, effective January 1, 1990.

Use applicable paragraphs and bracketed material.

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.

13.36
Issues In Financial Exploitation Of An Elderly Or Disabled Person

To sustain the charge of financial exploitation of [(an elderly) (a disabled)] person, the State must prove the following propositions:

First Proposition: That the defendant was in a position of trust and confidence with ____; and

Second Proposition: That ____ was [(an elderly) (a disabled)] person; and

Third Proposition: That the defendant knowingly and by [(deception) (intimidation)] obtained control over the property of ____; and

Fourth Proposition: That the defendant intended to permanently deprive ____ of the use, benefit, or possession of that property[; and

Fifth Proposition: That the value of the property was [(more than $300) ($5,000 or more) ($100,000 or more)]].

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

Committee Note

720 ILCS 5/16-1.3(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16-1.3(a) (1991)), added by P.A. 86-153, effective January 1, 1990.

Give Instruction 13.35.

The Committee has included the value of the property as an issue to be resolved by the jury because Section 16-1.3(a) sets forth different penalties depending on the value of the property in question. Accordingly, the Committee has included the Fifth Proposition which should be given when the value of the property exceeds $300.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin "To sustain the charge of financial exploitation of a disabled person in excess of $300, the State must prove . . . ."

Insert in the blanks the name of the elderly or disabled person.

Use applicable bracketed material.

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. See Instruction 5.03.

13.37
Definition Of Deceptive Practices

A person commits the offense of deceptive practices when he, with intent to defraud,

[1] causes another, by [(deception) (threat)] to execute a document [(disposing of property) (by which a pecuniary obligation is incurred)].

[or]

[2] being [(an officer) (a manager) (a person participating in the direction)] of a financial institution, knowingly [(receives) (permits the receipt of)] [(a deposit) (an investment)], knowing that the institution is insolvent.

[or]

[3] knowingly [(makes) (directs another to make)] a false or deceptive statement addressed to the public for the purpose of promoting the sale of [(property) (services)].

[or]

[4] with intent [(to obtain control over property) (to pay for [(property) (labor) (services)] of another) (to satisfy an obligation for payment of tax under the Retailers' Occupation Tax Act [or any other tax due to the State of Illinois])], [(issues) (delivers)] [(a check) (an order)] upon a [(real) (fictitious)] depository for the payment of money, knowing that it will not be paid by the depository.

[or]

[5] issues or delivers a check or other order upon a real or fictitious depository in an amount exceeding $150 in payment of [(an amount owed on any credit transaction for [(property) (labor) (services)]) (the entire amount owed on any credit transaction for [(property) (labor) (services)]), knowing that it will not be paid by the depository, and thereafter fails to provide funds or credit with the depository in the face amount of the check or order within seven days of receiving actual notice from the depository or payee of the dishonor of the check or order.

Committee Note

720 ILCS 5/17-1(B) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §17-1(B) (1991)), as amended by P.A. 84-897, effective September 23, 1985.

Give Instruction 13.38.

Use applicable paragraphs and bracketed material.

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.

13.38
Issues In Deceptive Practices

To sustain the charge of deceptive practices, the State must prove the following propositions:

First Proposition: That the defendant caused ____ to execute a ____[(which disposed of property) (by which a pecuniary obligation was incurred)]; and

Second Proposition: That the defendant did so by [(deception) (threat)]; and

Third Proposition: That the defendant did so with intent to defraud.

[or]

First Proposition: That the defendant was [(an officer) (a manager) (a person participating in the direction)] of a ____; and

Second Proposition: That the defendant knowingly [(received) (permitted the receipt of)] [(a deposit) (an investment)]; and

Third Proposition: That the ____ was then insolvent; and

Fourth Proposition: That the defendant then knew that the ____ was insolvent; and

Fifth Proposition: That the defendant did so with the intent to defraud.

[or]

First Proposition: That the defendant knowingly [(made) (directed another to make)] a statement addressed to the public for the purpose of promoting the sale of ____; and

Second Proposition: That the defendant did so with the intent to defraud; and

Third Proposition: That the statement was false or deceptive; and

Fourth Proposition: That the defendant knew the statement was false or deceptive.

[or]

First Proposition: That the defendant, with intent [(to obtain control over property) (to pay for [(property) (labor) (services)] of ____) (to satisfy a tax due to the State of Illinois)] [(issued) (delivered)] [(a check) (an order)] upon a [(real) (fictitious)] depository; and

Second Proposition: That the defendant knew that the [(check) (order)] would not be paid; and

Third Proposition: That the defendant did so with the intent to defraud.

[or]

First Proposition: That the defendant [(issued) (delivered)] [(a check) (an order)] upon a [(real) (fictitious)] depository; and

Second Proposition: That such [(check) (order)] was in an amount exceeding $150 [(in payment of an amount owed on any credit transaction for [(property) (labor) (services)]) (in payment of the entire amount owed on any credit transaction for [(property) (labor) (services)])]; and

Third Proposition: That the defendant knew that the [(check) (order)] would not be paid by the depository; and

Fourth Proposition: That the defendant thereafter failed to provide funds or credit with the depository in the face amount of the [(check) (order)] within seven days of receiving actual notice from the depository or payee of the dishonor of the [(check) (order)].

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

Committee Note

720 ILCS 5/17-1(B) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §17-1(B) (1991)), as amended by P.A. 84-897, effective September 23, 1985.

Give Instruction 13.37.

In the first alternative set of propositions, insert in the appropriate blank the name of the victim and the document as charged.

In the second alternative set of propositions, insert in the blank a description of the financial institution as charged.

In the third alternative set of propositions, insert in the blank a description of the property or services being promoted as charged.

In the fourth alternative set of propositions, insert in the blank the name of the victim.

Use applicable paragraphs and bracketed material.

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. See Instruction 5.03.

13.38A
Inference Arising From Insufficient Funds

Committee Note

See 720 ILCS 5/17-1(B)(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §17-1(B)(d) (1991)), as amended by P.A. 84-897, effective September 23, 1985.

Dictum in People v. Gray, 99 Ill.App.3d 851, 426 N.E.2d 290, 55 Ill.Dec. 315 (5th Dist.1981), supports the view that the legislature's use of the term "*prima facie*" is a direction to the court on when to submit the evidence to the jury and should not be translated into a jury instruction. Gray holds that the jury should not be instructed in the language of the statute about the "*prima facie*" effect of certain evidence. The term is a legal one which, according to Gray, might be read by a jury as creating a type of presumption that is constitutionally impermissible in criminal cases.

13.39
Definition Of Forgery

Use For Cases Where The Offense Is Alleged To Have Occurred Before January 1, 2012

A person commits the offense of forgery when he, with intent to defraud, knowingly

[1] [(makes) (alters)] a _____apparently capable of defrauding another so that it appears to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)].

[or]

[2] [(issues) (delivers)] a _____apparently capable of defrauding another which he knows has been made or altered so that it appears to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)].

[or]

[3] possesses, with intent to [(issue) (deliver)], a _____ apparently capable of defrauding another which he knows has been made or altered so that it appears to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)].

[or]

[4] unlawfully uses the digital signature of another.

[or]

[5] unlawfully uses the signature device of another to create an electronic signature of that other person.

Committee Note

720 ILCS 5/17-3 (West 2015), amended by P.A. 90-575, effective March 20, 1998, which added subsection (a)(4), amended by P.A. 90-759, effective July 1, 1999, which added subsection (a)(5).

Give Instruction 13.40.

When applicable, give Instruction 13.42, defining “document”.

When applicable, give Instruction 5.12, defining “digital signature”.

When applicable, give Instruction 5.13, defining “electronic signature”.

When applicable, give Instruction 5.14, defining “signature device”.

In *People v. Kent*, 40 Ill. App.3d 256, 260 350 N.E.2d 890 (5th Dist. 1976), the appellate court found that a check was apparently capable of defrauding another where it was complete in every respect except its genuineness.

Insert in the blanks the appropriate descriptions of the documents involved, e.g. check, note, mortgage.

Use applicable paragraphs and bracketed material.

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.

13.39A
Definition Of Forgery

Use For Cases Where The Offense Is Alleged To Have Occurred After December 31, 2011

A person commits the offense of forgery when he, with intent to defraud, knowingly

[1] [makes a false document] [or] [alters any document to make it false] apparently capable of defrauding another so that it appears to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)].

[or]

[2] [issues] [or] [delivers] a _____apparently capable of defrauding another which he knows has been made or altered so that it appears to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)].

[or]

[3] possesses, with intent to [(issue) (deliver)], a _____ apparently capable of defrauding another which he knows has been made or altered so that it appears to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)].

[or]

[4] unlawfully uses the digital signature of another.

[or]

[5] unlawfully uses the signature device of another to create an electronic signature of that other person.

Committee Note

720 ILCS 5/17-3 (West 2015), amended by P.A. 90-575, effective March 20, 1998, which added subsection (a)(4), amended by P.A. 90-759, effective July 1, 1999, which added subsection (a)(5); amended by P.A. 97-231, changing the language of subsection (a)(1) and adding the definition of "false document or document that is false".

Give Instruction 13.40.

When applicable, give Instruction 13.42, defining "document".

When applicable, give Instruction 5.12, defining "digital signature".

When applicable, give Instruction 5.13, defining "electronic signature".

When applicable, give Instruction 5.14, defining "signature device".

When applicable, give Instruction 5.15, defining “false document” or “document that is false”.

In *People v. Kent*, 40 Ill. App.3d 256, 260, 350 N.E.2d 890 (5th Dist. 1976), the appellate court found that a check was apparently capable of defrauding another where it was complete in every respect except its genuineness.

Insert in the blanks the appropriate descriptions of the documents involved, *e.g.* check, note, mortgage.

Use applicable paragraphs and bracketed material.

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.

13.40
Issues In Forgery

Use For Cases Where The Offense Is Alleged To Have Occurred Before January 1, 2012

To sustain the charge of forgery, the State must prove the following propositions:

[1] *First Proposition*: That the defendant knowingly [(made) (altered)] a _____so that it appeared to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)]; and

[or]

[2] *First Proposition*: That the defendant knowingly [(issued) (delivered)] a _____which he knew had been made or altered so that it appeared to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)]; and

[or]

[3] *First Proposition*: That the defendant knowingly possessed, with intent to issue or deliver a _____, which he knew had been made or altered so that it appeared to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)]; and

[or]

[4] *First Proposition*: That the defendant knowingly and unlawfully used the digital signature of another; and

[or]

[5] *First Proposition*: That the defendant knowingly and unlawfully used the signature device of another to create an electronic signature of that other person; and

Second Proposition: That the defendant did so with an intent to defraud; and

Third Proposition: That the _____was apparently capable of defrauding another.

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

Committee Note

720 ILCS 5/17-3 (West 2015), amended by P.A. 90-575, effective March 20, 1998, which added subsection (a)(4), amended by P.A. 90-759, effective July 1, 1999, which added subsection (a)(5).

Give Instruction 13.39.

When applicable, give Instruction 13.42, defining "document".

When applicable, give Instruction 5.12, defining "digital signature".

When applicable, give Instruction 5.13, defining "electronic signature".

When applicable, give Instruction 5.14, defining "signature device".

In *People v. Smith*, 259 Ill. App.3d 492, 500-01, 631 N.E.2d 738 (4th Dist. 1994), the appellate court concluded that the State is not required to prove that anyone was actually defrauded by the defendant's conduct, and accordingly held that the State need not allege or prove the identity of the victim whom the defendant intended to defraud. *See also People v. Crouch*, 29 Ill.2d 485, 486-87, 194 N.E.2d 248 (1963). Because this instruction formerly required the inclusion of the victim's identity, the appellate court held that it misstated the law. In light of *Smith*, the Committee has deleted the victim's identity previously required in the Second Proposition.

The bracketed numbers [1] through [5] correspond to the alternatives of the same number in Instruction 13.39, the definitional instruction for this offense. Select the alternative First Proposition that corresponds to the alternative selected from the definitional instruction.

Insert in the blanks the appropriate descriptions of the documents involved, e.g. check, note, mortgage.

Use applicable paragraphs and bracketed material.

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.

13.40A
Issues In Forgery

Use For Cases Where The Offense Is Alleged To Have Occurred After December 31, 2011

To sustain the charge of forgery, the State must prove the following propositions:

[1] *First Proposition*: That the defendant knowingly [(made a false document) (altered any document to make it false)] a _____so that it appeared to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)]; and

[or]

[2] *First Proposition*: That the defendant knowingly [(issued) (delivered)] a _____which he knew had been made or altered so that it appeared to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)]; and

[or]

[3] *First Proposition*: That the defendant knowingly possessed, with intent to issue or deliver a _____, which he knew had been made or altered so that it appeared to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)]; and

[or]

[4] *First Proposition*: That the defendant knowingly and unlawfully used the digital signature of another; and

[or]

[5] *First Proposition*: That the defendant knowingly and unlawfully used the signature device of another to create an electronic signature of that other person; and

Second Proposition: That the defendant did so with an intent to defraud; and

Third Proposition: That the _____was apparently capable of defrauding another.

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

Committee Note

720 ILCS 5/17-3 (West 2013), amended by P.A. 90-575, effective March 20, 1998, which added subsection (a)(4), amended by P.A. 90-759, effective July 1, 1999, which added subsection (a)(5).

Give Instruction 13.39.

When applicable, give Instruction 13.42, defining "document".

When applicable, give Instruction 5.12, defining "digital signature".

When applicable, give Instruction 5.13, defining "electronic signature".

When applicable, give Instruction 5.14, defining "signature device".

When applicable, give Instruction 5.15, defining "false document" or "document that is false".

In *People v. Smith*, 259 Ill. App.3d 492, 500-01, 631 N.E.2d (4th Dist. 1994), the appellate court concluded that the State is not required to prove that anyone was actually defrauded by the defendant's conduct, and accordingly held that the State need not allege or prove the identity of the victim whom the defendant intended to defraud. *See also People v. Crouch*, 29 Ill.2d 485, 486-87, 194 N.E.2d 248 (1963). Because this instruction formerly required the inclusion of the victim's identity, the appellate court held that it misstated the law. In light of *Smith*, the Committee has deleted the victim's identity previously required in the Second Proposition.

The bracketed numbers [1] through [5] correspond to the alternatives of the same number in Instruction 13.39, the definitional instruction for this offense. Select the alternative First Proposition that corresponds to the alternative selected from the definitional instruction.

Insert in the blanks the appropriate descriptions of the documents involved, *e.g.* check, note, mortgage.

Use applicable paragraphs and bracketed material.

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.

13.41
Definition Of Value--Commercial Or Written Instrument

The word "value" of property consisting of any commercial instrument or any written instrument representing or embodying rights concerning anything of value, labor, or services or otherwise of value to the owner means

[1] the "market value" of such instrument if such instrument is negotiable and has a market value; and

[2] the "actual value" of such instrument if such instrument is not negotiable or is otherwise without a market value. [For the purpose of establishing such "actual value," the interest of any owner or owners entitled to part or all of the property represented by such instrument, by reason of such instrument, may be shown, even if another "owner" may be named in the complaint, information, or indictment.]

Committee Note

720 ILCS 5/15-9 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §15-9 (1991)).

Use applicable paragraphs and bracketed material.

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.

13.41A
Definition Of Value--Theft

The word "value" means the fair cash market value of the property at the time of the incident in question.

Fair cash market value is what a willing buyer would pay to a willing seller in cash for the property at the time and place of the alleged theft.

Committee Note

Where there is an issue on value and the value can make a difference between a felony and a misdemeanor, it is best for the jury to decide the issue. It is necessary, therefore, to include a definition of value.

When theft of a commercial instrument is involved, do not use this instruction. Use Instruction 13.41 instead. When the value of damaged property is involved, do not use this instruction. Instead, use Instruction 13.41B.

See People v. Cobetto, 66 Ill.2d 488, 363 N.E.2d 854, 6 Ill.Dec. 907 (1977).

13.41B
Definition Of Value--Damage

In considering whether the damage to the property alleged to have been damaged exceeds ____, you may consider the cost of repair or replacement cost of the property. When the repair or replacement cost exceeds the fair cash market value, then it is the fair cash market value of the goods you are to consider in deciding the amount of damages in this case. [Fair cash market value is what a willing buyer would pay to a willing seller in cash for the property at the time and place of the alleged damage.]

Committee Note

An amendment to 720 ILCS 5/21-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §21-1 (1991)), effective January 1, 1990, provides that in cases involving felony damage to property in excess of $300, whether the damage exceeds the statutory amount is to be resolved by the trier of fact.

Ordinarily, the damage is measured by cost of repair, but it has been held not to be a fair measure where the property value did not exceed the cost of repair. In those cases, the fair cash market value is the test. People v. Carraro, 67 Ill.App.3d 81, 384 N.E.2d 581, 23 Ill.Dec. 787 (4th Dist.1979).

Insert in the blank the applicable statutory amount.

Use applicable bracketed material.

13.42
Definition Of Document—Forgery

The phrase "document capable of defrauding another" includes, but is not limited to, one by which any right, obligation or power with reference to any person or property may be created, transferred, altered or terminated. [The phrase also includes information that is inscribed, stored, or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.] [The phrase also includes a Universal Price Code label or coin.].

Committee Note

720 ILCS 5/17-3(c) (West 2015); 5 ILCS 175/5-105 (West 2015).

13.43
Definition Of Retail Theft

A person commits the offense of retail theft when he knowingly

[1] [(takes possession of) (carries away) (transfers) (causes to be carried away) (causes to be transferred)] any merchandise [(displayed) (held) (stored) (offered for sale)] in a retail mercantile establishment with the intention of [(retaining such merchandise) (depriving the merchant permanently of the possession, use, or benefit of such merchandise)] without paying the full retail value of such merchandise[(.) (; and)]

[or]

[2] [(alters) (transfers) (removes)] any [(label) (price tag) (indicia of value) (marking which aids in determining value)] affixed to any merchandise [(held) (stored) (offered for sale)] in a retail mercantile establishment and attempts to purchase such merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of the full retail value of such merchandise[(.) (; and)]

[or]

[3] transfers any merchandise [(displayed) (held) (stored) (offered)] for sale in a retail mercantile establishment from the container [(in) (on)] which such merchandise is displayed to any other container with the intention of depriving the merchant of the full retail value of such merchandise[(.) (; and)]

[or]

[4] under-rings with the intention of depriving the merchant of the full retail value of the merchandise[(.) (; and)]

[or]

[5] removes a shopping cart from the premises of a retail mercantile establishment without the consent of the merchant given at the time of such removal with the intention of depriving the merchant permanently of the [(possession) (use) (benefit)] of such cart[(.) (; and)]

[or]

[6] represents to a merchant that he or another is the lawful owner of property, knowing that such representation is false, and [(conveys) (attempts to convey)] that property to a merchant who is the owner of the property in exchange for [(money) (merchandise) (credit) (other property of the merchant)] [(.) (; and)]

[or]

[7] [(uses) (possesses)] any [(theft detection shielding device) (theft detection device remover)] with the intention of using such device to deprive the merchant permanently of the [(possession) (use) (benefit)] of any merchandise [(displayed) (held) (stored) (offered for sale)] in a retail mercantile establishment without paying the full retail value of such merchandise[(.) (; and)]

[or]

[8] [(obtains) (exerts unauthorized control over)] property of the owner and thereby intends to deprive the owner permanently of the [(use) (benefit)] of the property when a lessee of the personal property of another fails to return it to the owner, or if the lessee fails to pay the full retail value of such property to the lessor in satisfaction of any contractual provision requiring such, within 30 days after written demand from the owner for its return[(.) (; and)]

[9] the value of the property exceeds $150.

Committee Note

720 ILCS 5/16A-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3 (1991)), as amended by P.A. 86-356, effective January 1, 1990, and 720 ILCS 5/16A-10.

When paragraph [1] is used, give Instruction 13.44. When paragraph [2] is used, give Instruction 13.44A. When paragraph [3] is used, give Instruction 13.44B. When paragraph [4] is used, give Instruction 13.44C. When paragraph [5] is used, give Instruction 13.44D. When paragraph [6] is used, give Instruction 13.44E. When paragraph [7] is used, give Instruction 13.44F. When paragraph [8] is used, give Instruction 13.44G.

Give Instructions 13.46 through 13.46I as applicable.

When the charge of retail theft exceeding $150 is brought, the statute specifically states that the value of the property is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding $150. See Chapter 720, Section 16A-10. Accordingly, the Committee has included paragraph [9] which should be given when the value of the property exceeds $150.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater offense and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this instruction would begin “A person commits the offense of retail theft in excess of $150 when he . . . .”

Use applicable paragraphs and bracketed material.

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.

13.44
Issues In Retail Theft By Taking Possession--Value Of $150 Or Less--Value Exceeding $150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That ____ was a merchant; and

Second Proposition: That the merchandise was [(displayed) (held) (stored) (offered)] for sale in a retail mercantile establishment; and

Third Proposition: That the defendant knowingly [(took possession of the merchandise) (carried away the merchandise) (transferred the merchandise) (caused the merchandise to be carried away) (caused the merchandise to be transferred)]; and

Fourth Proposition: That when he did so, the defendant intended to deprive the merchant permanently of the [(possession of) (use of) (benefit of)] the merchandise without paying the full retail value of the merchandise[; and

Fifth Proposition: That the full retail value of the merchandise exceeded $150].

[or]

Fourth Proposition: That the defendant intended to retain the merchandise[; and

Fifth Proposition: That the full retail value of the merchandise exceeded $150].

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

Committee Note

720 ILCS 5/16A-3(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3(a) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [1].

Give Instructions 13.46 through 13.46C.

When the State charges that the merchandise had a full retail value which exceeded $150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this instruction would begin "To sustain the charge of retail theft in excess of $150, the State must prove . . . ."

Insert in the blank the name of the merchant.

Use applicable bracketed material.

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. See Instruction 5.03.

13.44A
Issues In Retail Theft By Altering, Transferring, Removing Price Indicia--Value $150 Or Less--Value Exceeding $150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That ____ was a merchant; and

Second Proposition: That the merchandise was [(displayed) (held) (stored) (offered)] for sale in a retail mercantile establishment; and

Third Proposition: That the defendant knowingly [(altered) (transferred) (removed)] any [(label) (price tag) (indicia of value) (marking which aids in determining value)] affixed to the merchandise; and

Fourth Proposition: That the defendant attempted to purchase personally or in consort with another the merchandise at less than the full retail value; and

Fifth Proposition: That the defendant intended to deprive the merchant of the full retail value of the merchandise[; and

Sixth Proposition: That the full retail value of the merchandise exceeded $150].

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

Committee Note

720 ILCS 5/16A-3(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3(b) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [2].

Give Instructions 13.46 through 13.46C.

When the State charges that the merchandise had a full retail value which exceeded $150, use the bracketed Sixth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this instruction would begin "To sustain the charge of retail theft in excess of $150, the State must prove . . . ."

Insert in the blank the name of the merchant.

Use applicable bracketed material.

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. See Instruction 5.03.

13.44B
Issues In Retail Theft By Transferring--Value Of $150 Or Less--Value Exceeding $150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That ____ was a merchant; and

Second Proposition: That the merchandise was [(displayed) (held) (stored) (offered)] for sale in a retail mercantile establishment; and

Third Proposition: That the defendant knowingly transferred the merchandise from the container [(in) (on)] which the merchandise was displayed to any other container; and

Fourth Proposition: That when he did so, the defendant intended to deprive the merchant of the full retail value of the merchandise[; and

Fifth Proposition: That the full retail value of the merchandise exceeded $150].

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

Committee Note

720 ILCS 5/16A-3(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3(c) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [3].

Give Instructions 13.46 through 13.46C.

When the State charges that the merchandise had a full retail value which exceeded $150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this instruction would begin "To sustain the charge of retail theft in excess of $150, the State must prove . . . ."

Insert in the blank the name of the merchant.

Use applicable bracketed material.

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. See Instruction 5.03.

13.44C
Issues In Retail Theft By Under-Rings--Value Of $150 Or Less--Value Exceeding $150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That ____ was a merchant; and

Second Proposition: That the defendant knowingly under-rang intending to deprive the merchant of the full retail value of the merchandise[; and

Third Proposition: That the full retail value of the merchandise exceeded $150].

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

Committee Note

720 ILCS 5/16A-3(d) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3(d) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [4].

Give Instructions 13.46 through 13.46B, and 13.46E.

When the State charges that the merchandise had a full retail value which exceeded $150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this instruction would begin "To sustain the charge of retail theft in excess of $150, the State must prove . . . ."

Insert in the blank the name of the merchant.

Use applicable bracketed material.

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. See Instruction 5.03.

13.44D
Issues In Retail Theft Of Shopping Cart--Value Of $150 Or Less--Value Exceeding $150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That ____ was a merchant; and

Second Proposition: That the defendant removed a shopping cart from the premises of the retail mercantile establishment without the consent of the merchant given at the time of such removal; and

Third Proposition: That the defendant intended to deprive the merchant permanently of the [(possession of) (use of) (benefit of)] that cart[; and

Fourth Proposition: That the full retail value of the shopping cart exceeded $150].

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

Committee Note

720 ILCS 5/16A-3(e) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3(e) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [5].

Give Instruction 13.46, Instructions 13.46B through 13.46D, and Instruction 13.46F.

When the State charges that the shopping cart had a full retail value which exceeded $150, use the bracketed Fourth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this instruction would begin "To sustain the charge of retail theft in excess of $150, the State must prove . . . ."

Insert in the blank the name of the merchant.

Use applicable bracketed material.

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. See Instruction 5.03.

13.44E
Issues In Retail Theft By False Representation--Value Of $150 Or Less--Value Exceeding $150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That ____ was a merchant; and

Second Proposition: That the defendant represented to the merchant that he was the lawful owner of the property; and

Third Proposition: That the defendant knew such representation was false; and

Fourth Proposition: That the defendant [(conveyed) (attempted to convey)] the property to the merchant in exchange for [(money) (credit) (other property of the merchant)] [; and

Fifth Proposition: That the full retail value of the property exceeded $150].

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

Committee Note

720 ILCS 5/16A-3(f) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3(f) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [6].

Give Instructions 13.46 and 13.46B.

When the State charges that the property had a full retail value which exceeded $150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this instruction would begin "To sustain the charge of retail theft in excess of $150, the State must prove . . . ."

Insert in the blank the name of the merchant.

Use applicable bracketed material.

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. See Instruction 5.03.

13.44F
Issues In Retail Theft By Theft Detection Shielding Device Or Device Remover--Value Of $150 Or Less--Value Exceeding $150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That ____ was a merchant; and

Second Proposition: That the merchandise was [(displayed) (held) (stored) (offered)] for sale in a retail mercantile establishment; and

Third Proposition: That the defendant knowingly [(used) (possessed)] a [(theft detection shielding device) (theft detection device remover)]; and

Fourth Proposition: That the defendant intended to use such [(device) (device remover)] to permanently deprive the merchant of the [(possession of) (use of) (benefit of)] the merchandise without paying the full retail value of the merchandise[; and

Fifth Proposition: That the full retail value of the merchandise exceeded $150].

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

Committee Note

720 ILCS 5/16A-3(g) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3(g) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [7].

Give Instructions 13.46 through 13.46C, 13.46G, and 13.46H.

When the State charges that the property had a full retail value which exceeded $150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this instruction would begin "To sustain the charge of retail theft in excess of $150, the State must prove . . . ."

Insert in the blank the name of the merchant.

Use applicable bracketed material.

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. See Instruction 5.03.

13.44G
Issues In Retail Theft--Lessee

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That ____ was the owner of property; and

Second Proposition: That the defendant leased the property from the owner; and

Third Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over that property by knowingly failing to return that property to the owner while intending to deprive the owner permanently of the [(use of) (benefit of)] that property by knowingly failing to return that property to the owner;

[or]

Third Proposition: That the defendant [(obtained) (exerted)] unauthorized control over that property by knowingly failing to pay the full retail value of that property pursuant to a lease contracted while intending to deprive the owner permanently of the [(use of) (benefit of)] that property by knowingly failing to pay the full retail value of that property pursuant to a contractual provision;

and

Fourth Proposition: That 30 days or more expired after the owner gave written demand to the defendant to return the property[; and

Fifth Proposition: That the full retail value of the property exceeded $150].

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

Committee Note

720 ILCS 5/16A-3(h) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-3(h) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [8].

Give Instruction 13.46.

When the State charges that the property has a full retail value which exceeded $150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $150, then this

instruction would begin "To sustain the charge of retail theft in excess of $150, the State must prove . . . ."

The Committee points out that the statute provides that a notice in writing, by registered mail, to the lessee at the address given by lessee and shown on the leasing agreement constitutes proper demand. The Committee takes no position on whether or not personal service on the lessee of the demand or a different type of mailing of the demand constitutes proper demand.

Insert in the blank the name of the owner.

Use applicable bracketed material.

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. See Instruction 5.03.

13.45
Presumption Arising From Concealed Merchandise

If you find beyond a reasonable doubt that the defendant concealed upon his person or among his belongings, unpurchased merchandise displayed, held, stored, or offered for sale in a retail mercantile establishment, and that the defendant removed that merchandise beyond the last known station for receiving payments for that merchandise in the retail mercantile establishment, you may presume that the defendant acted with the intention of retaining that merchandise or with the intention of depriving the merchant permanently of the possession, use, or benefit of that merchandise without paying the full retail value of that merchandise.

You are never required to make this presumption. It is for the jury to determine whether the presumption should be made.

Concealment of merchandise upon the defendant's person may be reasonably explained by the facts and circumstances in evidence.

Removal of merchandise beyond the last known station for receiving payments may be reasonably explained by the facts and circumstances in evidence.

[In considering whether concealment of merchandise upon the defendant's person or removal of merchandise beyond the last known station for receiving payments in the retail mercantile establishment has been reasonably explained, you are reminded that the accused need not testify nor produce evidence.]

Committee Note

720 ILCS 5/16A-4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-4 (1991)).

The Committee recommends that no instruction be given on this subject for the reasons set forth in People v. Killings, 103 Ill.App.3d 1074, 431 N.E.2d 1387, 59 Ill.Dec. 630 (4th Dist.1982).

If for some reason the court determines that the instruction should be given, the judge should first determine as a matter of law whether the jury could find concealment or removal.

The last bracketed paragraph should be given only at the request of the defendant.

13.45A
Definition Of Conceal Merchandise

The term "conceal merchandise" means that, although there may be some notice of its presence, that merchandise is not visible through ordinary observation.

Committee Note

720 ILCS 5/16A-2.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.1 (1991)).

13.46
Definition Of Full Retail Value

The phrase “full retail value” means the merchant's stated or advertised price of the merchandise.

Committee Note

720 ILCS 5/16A-2.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.2 (1991)).

13.46A
Definition Of Merchandise

The word “merchandise” means any item of tangible personal property.

Committee Note

720 ILCS 5/16A-2.3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.3 (1991)).

13.46B
Definition Of Merchant

The word "merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchise, or independent contractor of such owner or operator.

Committee Note

720 ILCS 5/16A-2.4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.4 (1991)).

13.46C
Definition Of Retail Mercantile Establishment

The phrase "retail mercantile establishment" means any place where merchandise is displayed, held, stored, or offered for sale to the public.

Committee Note

720 ILCS 5/16A-2.9 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.9 (1991)).

13.46D
Definition Of Premises Of A Retail Mercantile Establishment

The phrase "premises of a retail mercantile establishment" includes, but is not limited to, the retail mercantile establishment, any common use areas in shopping centers, and all parking areas set aside by a merchant or on behalf of a merchant for parking of vehicles for the convenience of the patrons of such retail mercantile establishment.

Committee Note

720 ILCS 5/16A-2.8 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.8 (1991)).

13.46E
Definition Of Under-Ring

The word “under-ring” means to cause the cash register or other sales recording device to reflect less than the full retail value of the merchandise.

Committee Note

720 ILCS 5/16A-2.11 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.11 (1991)).

13.46F
Definition Of Shopping Cart

The term "shopping cart" means those push carts of the type or types which are commonly provided by grocery stores, drug stores, or other retail mercantile establishments for the use of the public in transporting commodities in the stores and markets and, incidentally, from the stores to a place outside the store.

Committee Note

720 ILCS 5/16A-2.10 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.10 (1991)).

13.46G
Definition Of Theft Detection Shielding Device

The phrase "theft detection shielding device" means any laminated or coated bag or device designed and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor.

Committee Note

720 ILCS 5/16A-2.12 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.12 (1991)).

13.46H
Definition Of Theft Detection Device Remover

The phrase "theft detection device remover" means any tool or device specifically designed and intended to be used to remove any theft detection device from any merchandise.

Committee Note

720 ILCS 5/16A-2.13 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.13 (1991)).

13.46I
Definition Of Person

The word “person” means any natural person or individual.

Committee Note

720 ILCS 5/16A-2.6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16A-2.6 (1991)).

13.47
Definition Of Unauthorized Possession Of Identification Document

A person commits the offense of unauthorized possession of identification document when he possesses for an unlawful purpose another person's identification document issued by the Illinois Department of Public Aid.

Committee Note

305 ILCS 5/8A-5A (West, 1999) (formerly Ill.Rev.Stat. ch. 23, §8A-5A (1991)), added by P.A. 86-1012, effective July 1, 1990.

Give Instructions 13.47A and 13.48.

13.47A
Definition Of Identification Document

The term "identification document" includes, but is not limited to, an authorization to participate in the federal food stamp program or the federal surplus food commodities program, or a card or other document which identifies a person as being entitled to public aid under the Illinois Public Aid Code.

Committee Note

305 ILCS 5/8A-5A (West, 1999) (formerly Ill.Rev.Stat. ch. 23, §8A-5A (1991)), added by P.A. 86-1012, effective July 1, 1990.

13.48
Issues In Unauthorized Possession Of Identification Document

To sustain the charge of unauthorized possession of identification document, the State must prove the following propositions:

First Proposition: That the defendant possessed an identification document issued by the Illinois Department of Public Aid; and

Second Proposition: That the identification document in question was another person's identification document; and

Third Proposition: That the defendant possessed this identification document for an unlawful purpose, namely ____.

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

Committee Note

305 ILCS 5/8A-5A (West, 1999) (formerly Ill.Rev.Stat. ch. 23, §8A-5A (1991)), added by P.A. 86-1012, effective July 1, 1990.

Give Instructions 13.47 and 13.47A.

Insert in the blank the alleged unlawful purpose.

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. See Instruction 5.03.

13.49
Definition Of Computer Tampering

A person commits the offense of computer tampering when he knowingly and [(without the authorization of a computer's owner) (in excess of the authority granted to him by the computer's owner)]

[1] [(accesses a computer or any part of a computer) (causes a computer or any part of a computer to be accessed) (accesses a program) (causes a program to be accessed) (accesses data) (causes data to be accessed)].

[or]

[2] [(accesses a computer or any part of a computer) (causes a computer or any part of a computer to be accessed) (accesses a program) (causes a program to be accessed) (accesses data) (causes data to be accessed)], and obtains [(data) (services)].

[or]

[3] [(accesses a computer or any part of a computer) (causes a computer or any part of a computer to be accessed) (accesses a program) (causes a program to be accessed) (accesses data) (causes data to be accessed)], and [(damages the computer) (destroys the computer) (alters a computer program) (deletes a computer program) (removes a computer program) (alters data) (deletes data) (removes data)].

[or]

[4] [(inserts) (attempts to insert)] a program into a [(computer) (computer program)] [(knowing) (having reason to believe)] that such program contains information or commands that [(will) (may)] [(damage that computer or any other computer subsequently accessing or being accessed by that computer) (destroy that computer or any other computer subsequently accessing or being accessed by that computer) (alter a computer program or data from that computer or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (delete a computer program or data from that computer, or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (remove a computer program or data from that computer, or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (cause loss to the users of that computer or the users of a computer which accesses or which is accessed by such program)].

Committee Note

720 ILCS 5/16D-3 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-3 (1991)), as amended by P.A. 86-762, effective January 1, 1990.

Give Instructions 13.55 through 13.55D when appropriate.

When the first paragraph is used, give Instruction 13.50 (Issues in Computer Tampering--Accessing). When the second paragraph is used, give Instruction 13.50A (Issues in Computer Tampering--Obtaining Data or Services). When the third paragraph is used, give Instruction 13.50B (Issues in Computer Tampering--Damage). When the fourth paragraph is used, give Instruction 13.50C (Issues in Computer Tampering--Inserting a Program).

The Committee notes the use of quotation marks around the word "program" in Chapter 720, Section 16-D-3(a)(4), when an unauthorized "program" is inserted into a computer or a computer program or an attempt is made to insert an unauthorized "program" into a computer or a computer program. The Committee suggests the use of neutral terminology when instructing on the unauthorized "program."

The word "owner" is defined in Instruction 13.33A.

Use applicable paragraphs and bracketed material.

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.

13.50
Issues In Computer Tampering--Accessing

To sustain the charge of computer tampering, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (accessed a program) (caused a program to be accessed) (accessed data) (caused data to be accessed)]; and

Second Proposition: That the defendant acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Third Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)].

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

Committee Note

720 ILCS 5/16D-3(a)(1) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-3(a)(1) (1991)), as amended by P.A. 86-762, effective January 1, 1990.

Give Instruction 13.49, paragraph [1].

Give Instructions 13.55 through 13.55C.

The Committee discussed the *mens rea* required for computer tampering and agreed that the defendant must know that he is accessing, and he must know that he is without or in excess of authority. See Chapter 720, Section 4-3(b).

Use applicable bracketed material.

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. See Instruction 5.03.

13.50A
Issues In Computer Tampering--Obtaining Data Or Services

To sustain the charge of computer tampering, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (accessed a program) (caused a program to be accessed) (accessed data) (caused data to be accessed)]; and

Second Proposition: That the defendant obtained [(data) (services)]; and

Third Proposition: That the defendant acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Fourth Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)].

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

Committee Note

720 ILCS 5/16D-3(a)(2) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-3(a)(2) (1991)), as amended by P.A. 86-762, effective January 1, 1990.

Give Instruction 13.49, paragraph [2].

Give Instructions 13.55 through 13.55D.

The Committee discussed the *mens rea* required for computer tampering and agreed that the defendant must know that he is accessing, and he must know that he is without or in excess of authority. See Chapter 720, Section 4-3(b).

Use applicable bracketed material.

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. See Instruction 5.03.

13.50B
Issues In Computer Tampering--Damage

To sustain the charge of computer tampering, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (accessed a program) (caused a program to be accessed) (accessed data) (caused data to be accessed)]; and

Second Proposition: That the defendant [(damaged the computer) (destroyed the computer) (altered a computer program) (altered data) (deleted a computer program) (deleted data) (removed a computer program) (removed data)]; and

Third Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Fourth Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)].

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

Committee Note

720 ILCS 5/16D-3(a)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-3(a)(3) (1991)), as amended by P.A. 86-762, effective January 1, 1990.

Give Instruction 13.49, paragraph [3].

Give Instructions 13.55 through 13.55D.

The Committee discussed the *mens rea* required for computer tampering and agreed that the defendant must know that he is accessing, and he must know that he is without or in excess of authority. See Chapter 720, Section 4-3(b).

Use applicable bracketed material.

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. See Instruction 5.03.

13.50C
Issues In Computer Tampering--Inserting A Program

To sustain the charge of computer tampering, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(inserted) (attempted to insert)] a program into a [(computer) (computer program)]; and

Second Proposition: That the defendant [(knew) (had reason to believe)] that the program which he [(inserted) (attempted to insert)] contained information or commands that [(would) (might)] [(damage that computer or any other computer subsequently accessing or being accessed by that computer) (destroy that computer or any other computer subsequently accessing or being accessed by that computer) (alter a computer program or data from that computer or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (delete a computer program or data from that computer or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (remove a computer program or data from that computer or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (cause loss to the users of that computer or the users of a computer which accesses or which is accessed by such program)]; and

Third Proposition: That the defendant acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Fourth Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)].

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

Committee Note

720 ILCS 5/16D-3(a)(4) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-3(a)(4) (1991)), as amended by P.A. 86-762, effective January 1, 1990.

Give Instruction 13.49, paragraph [4].

Give Instructions 13.55 through 13.55D.

The Committee discussed the *mens rea* required for computer tampering and agreed that the defendant must know that he is inserting or attempting to insert a program, and he must know that he is without or in excess of authority. See Chapter 720, Section 4-3(b).

See Committee Note to Instruction 13.49, regarding the word “program.”

Use applicable bracketed material.

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. See Instruction 5.03.

13.51
Definition Of Aggravated Computer Tampering

A person commits the offense of aggravated computer tampering when he, in committing computer tampering, knowingly

[1] causes [(disruption of) (interference with)] vital [(services of) (operations of)] [(state government) (local government) (a public utility)].

[or]

[2] creates a strong probability of death or great bodily harm to one or more individuals.

Committee Note

720 ILCS 5/16D-4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-4 (1991)), as amended by P.A. 86-820, effective September 7, 1989.

Give Instructions 13.49 and 13.52.

Give Instructions 13.55 through 13.55E.

Use applicable paragraphs and bracketed material.

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.

13.52
Issues In Aggravated Computer Tampering

To sustain the charge of aggravated computer tampering, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (caused a computer program or data to be accessed)]; and

Second Proposition: That in doing so, the defendant [(damaged a computer) (destroyed a computer) (altered a computer program or data) (deleted a computer program or data) (removed a computer program or data)]; and

Third Proposition: That the defendant acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Fourth Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Fifth Proposition: That the defendant knowingly caused [(deception of) (interference with)] vital [(services of) (operations of)] [(state government) (local government) (a public utility)].

[or]

Fifth Proposition: That the defendant knowingly created a strong probability of death or great bodily harm to one or more individuals.

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

Committee Note

720 ILCS 5/16D-4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-4 (1991)), as amended by P.A. 86-820, effective September 7, 1989.

Give Instruction 13.51.

Give Instructions 13.55 through 13.55E.

The Committee discussed the *mens rea* required for aggravated computer tampering and agreed that the defendant must know that he is accessing, and he must know that he is without or in excess of authority. See Chapter 720, Section 4-3(b).

Use applicable bracketed material.

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. See Instruction 5.03.

13.53
Definition Of Computer Fraud

A person commits the offense of computer fraud when he knowingly

[1] [(accesses a computer or any part of a computer) (causes a computer or any part of a computer to be accessed) (accesses a program) (causes a program to be accessed) (accesses data) (causes data to be accessed)] and he does so [(for the purpose of [(devising) (executing)] any [(scheme to defraud) (artifice to defraud)]) (as part of a deception)].

[or]

[2] [(obtains use of a computer or any part of a computer) (damages a computer or any part of a computer) (destroys a computer or any part of a computer) (alters any data contained in a computer) (alters any program contained in a computer) (deletes any program contained in a computer) (deletes any data contained in a computer) (removes any data contained in a computer) (removes any program contained in a computer)] [(in connection with a scheme to defraud) (in connection with an artifice to defraud) (as part of a deception)].

[or]

[3] [(accesses a computer) (accesses any part of a computer) (accesses a program) (accesses data) (causes a computer to be accessed) (causes any part of a computer to be accessed) (causes a program to be accessed) (causes data to be accessed)] and obtains [(money) (control over money) (property) (services of another)] [(in connection with any scheme to defraud) (in connection with any artifice to defraud) (as part of a deception)][, and the value of the [(money) (property) (services)] is [(more than $1,000) ($50,000 or more)]].

Committee Note

720 ILCS 5/16D-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-5 (1991)).

When paragraph [1] is used, give Instruction 13.54 (Issues in Computer Fraud by Access). When paragraph [2] is used, give Instruction 13.54A (Issues in Computer Fraud by Damage). When paragraph [3] is used, give Instruction 13.54B (Issues in Computer Fraud by Access for Money).

Give Instructions 13.55 through 13.55D, when appropriate.

The Committee, after a long discussion, decided that for the statute to apply, the purpose of any scheme addressed in this instruction must be to defraud, so although the statute reads "... in connection with any scheme ...", the Committee has drafted this instruction accordingly.

The Committee has included the value of the money, property, or services as an issue to be resolved by the jury because Section 16D- 5(b)(3) sets forth different penalties depending on the value of the money, property, or services in question. Accordingly, the Committee has included the bracketed material at the end of paragraph [3] which should be given when the value of the property exceeds $1,000.

If the value of the money, property, or services is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the money, property, or services exceeds $1,000, then this instruction would begin "A person commits the offense of computer fraud in excess of $1,000 when he . . . ."

Use applicable paragraphs and bracketed material.

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.

13.54
Issues In Computer Fraud By Access

To sustain the charge of computer fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (accessed data) (caused data to be accessed) (accessed a program) (caused a program to be accessed)]; and

Second Proposition: That the defendant acted [(for the purpose of [(devising) (executing)] [(a scheme to defraud) (an artifice to defraud)]) (as part of a deception)]; and

Third Proposition: That the defendant knew that he acted [(for the purpose of [(devising) (executing)] [(a scheme to defraud) (an artifice to defraud)]) (as part of a deception)].

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

Committee Note

720 ILCS 5/16D-5(a)(1) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-5(a)(1) (1991)).

Give Instruction 13.53, paragraph [1].

Give Instructions 13.55 through 13.55D.

The Committee discussed the *mens rea* required for computer fraud and agreed that the defendant must know that he is accessing, and he must know that he is acting for the purpose of defrauding or as part of a deception. See Chapter 720, Section 4-3(b).

Use applicable bracketed material.

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. See Instruction 5.03.

13.54A
Issues In Computer Fraud By Damage

To sustain the charge of computer fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(obtained use of a computer or any part of a computer) (damaged a computer or any part of a computer) (destroyed a computer or any part of a computer) (altered any data contained in a computer) (altered any program contained in a computer) (deleted any data contained in a computer) (deleted any program contained in a computer) (removed any data contained in a computer) (removed any program contained in a computer)]; and

Second Proposition: That the defendant acted [(in connection with any scheme to defraud) (in connection with any artifice to defraud) (as part of a deception)]; and

Third Proposition: That the defendant knew he acted [(in connection with any scheme to defraud) (in connection with any artifice to defraud) (as part of a deception)].

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

Committee Note

720 ILCS 5/16D-5(a)(2) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-5(a)(2) (1991)).

Give Instruction 13.53, paragraph [2].

Give Instructions 13.55 through 13.55B.

The Committee discussed the *mens rea* required for computer fraud and agreed that the defendant must know that he is damaging, and he must know that he is acting for the purpose of defrauding or as a part of a deception.

Use applicable bracketed material.

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. See Instruction 5.03.

13.54B
Issues In Computer Fraud By Access For Money

To sustain the charge of computer fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (accessed data) (caused data to be accessed) (accessed a program) (caused a program to be accessed)]; and

Second Proposition: That the defendant obtained [(money) (control over money) (property) (services of another)]; and

Third Proposition: That the defendant acted [(in connection with any scheme to defraud) (in connection with any artifice to defraud) (as part of a deception)]; and

Fourth Proposition: That the defendant knew that he acted [(in connection with any artifice to defraud) (as part of a deception)][; and

Fifth Proposition: That the value of the [(money) (property) (services)] was [(more than $1,000) ($50,000 or more)]].

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

Committee Note

720 ILCS 5/16D-5(a)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-5(a)(3) (1991)).

Give Instruction 13.53, paragraph [3].

Give Instructions 13.33, and 13.55 through 13.55D.

The Committee discussed the *mens rea* required for computer fraud and agreed that the defendant must know that he is accessing, and he must know that he is acting for the purpose of defrauding or as part of a deception.

The Committee has included the value of the money, property, or services as an issue to be resolved by the jury because Section 16D- 5(b)(3) sets forth different penalties depending on the damage to the property in question. Accordingly, the Committee has included the Fifth Proposition which should be given when the value of the property exceeds $1,000.

If the value of the money, property, or services is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the money, property, or services exceeds $1,000, then this instruction would begin "To sustain the charge of computer fraud in excess of $1,000, the State must prove . . . ."

Use applicable bracketed material.

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. See Instruction 5.03.

13.55
Definition Of Computer

The word “computer” means a device that accepts, processes, stores, retrieves, or outputs data, and includes, but is not limited to, auxiliary storage and telecommunications devices connected to computers.

Committee Note

720 ILCS 5/16D-2(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-2(a) (1991)).

13.55A
Definition Of Computer Program Or Program

The term “computer program” or the word “program” means a series of coded instructions of statements in a form acceptable to a computer which causes the computer to process data and supply the results of the data processing.

Committee Note

720 ILCS 5/16D-2(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-2(b) (1991)).

13.55B
Definition Of Data

The word “data” means a representation of information, knowledge, facts, concepts, or instructions, including program documentation, which is prepared in a formalized manner and is stored or processed in or transmitted by a computer. Data shall be considered property and may be in any form including, but not limited to, printouts, magnetic or optical storage media, punch cards, or data stored internally in the memory of the computer.

Committee Note

720 ILCS 5/16D-2(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-2(c) (1991)).

13.55C
Definition Of Access

The word “access” means to use, instruct, communicate with, store data in, retrieve, or intercept data from, or otherwise utilize any services of a computer.

Committee Note

720 ILCS 5/16D-2(e) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-2(e) (1991)).

13.55D
Definition Of Services

The word “services” includes, but is not limited to, computer time, data manipulation, or storage functions.

Committee Note

720 ILCS 5/16D-2(f) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-2(f) (1991)).

13.55E
Definition Of Vital Services Or Operations

The phrase "vital services or operations" means those services or operations required to provide, operate, maintain, and repair network cabling, transmission, distribution, or computer facilities necessary to ensure or protect the public health, safety, or welfare. Public health, safety, or welfare include, but are not limited to, services provided by medical personnel or institutions, fire departments, emergency service agencies, national defense contractors, armed forces or militia personnel, private and public utility companies, or law enforcement agencies.

Committee Note

720 ILCS 5/16D-2(g) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §16D-2(g) (1991)).

13.56
Definition Of Insurance Fraud

A person commits the offense of insurance fraud [involving property valued at [($300 or less) (more than $300 but not more than $10,000) (more than $10,000 but not more than 100,000) ($100,000 or more)]] when he knowingly and by deception [(obtains control) (attempts to obtain control) (causes control to be obtained)] over the property of an insurance company by making a false claim on any insurance policy issued by an insurance company and intends to permanently deprive the insurance company of the use and benefit of that property, and the property is valued at [($300 or less) (more than $300 but not more than $10,000) (more than $10,000 but not more than $100,000) ($100,000 or more)].

Committee Note

720 ILCS 5/46-1 (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.57.

Give Instruction 13.56A, defining the word "value", when the value of the defrauded property is an issue.

Ordinarily, the instruction sent to the jury need not contain the phrase "... but not more than $10,000" or the phrase "... but not more than $100,000," unless the jury will receive instructions on a lesser-included insurance fraud offense when the range of the disputed value of the defrauded property extends across the incremental values listed in Section 46-1(b).

Use applicable bracketed material.

13.56A
Definition Of Value--Insurance Fraud

Where the exact value of property [(obtained) (attempted to be obtained)] is either not asserted by the defendant or not specifically set by the terms of the insurance policy, then the value of the property shall be [both] [(the fair market replacement value of the property claimed to be lost) [and] (the reasonable costs of reimbursing a vendor or other claimant for services to be rendered)].

[The pertinent value of the defrauded property in insurance fraud is the value of the property [(obtained) (attempted to be obtained) (caused to be obtained)] from the insurance company, which will not necessarily be the same as the value of the property covered under the insurance policy.]

Committee Note

720 ILCS 5/46-1(c) (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993.

Give this instruction when the value of the defrauded property is an issue.

Use the final bracketed paragraph when the value of the property obtained, attempted to be obtained, or caused to be obtained from the insurance company differs from the value of the property covered under the insurance policy. For instance, if the defendant submits a $300 dollar fraudulent claim to an insurance company under a policy covering a $500,000 home, then the value of the insurance fraud is $300, not $500,000. In such a situation, use the final bracketed paragraph.

This definition directly applies only to the offense of insurance fraud. See 720 ILCS 5/46-1(c).

Use applicable bracketed material.

13.57
Issues In Insurance Fraud

To sustain the charge of insurance fraud [involving property valued at [($300 or less) (more than $300 but not more than $10,000) (more than $10,000 but not more than $100,000) ($100,000 or more)]], the State must prove the following propositions:

First Proposition: That the defendant knowingly made a claim to an insurance company under any insurance policy issued by an insurance company; and

Second Proposition: That the defendant knew that this claim was false; and

Third Proposition: That the defendant knowingly and by deception [(obtained control) (attempted to obtain control) (caused control to be obtained)] over the property of an insurance company by making the false claim; and

Fourth Proposition: That the defendant intended to permanently deprive the insurance company of the use and benefit of this property; and

Fifth Proposition: That this property of the insurance company was valued at [($300 or less) (more than $300 but not more than $10,000) (more than $10,000 but not more than $100,000) ($100,000 or more)].

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

Committee Note

720 ILCS 5/46-1 (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.56.

See the Committee Note to Instruction 13.56 regarding how to instruct the jury when the range of the disputed value of the defrauded property extends across the incremental values in Section 46-1(b).

Use applicable bracketed material.

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. See Instruction 5.03.

13.58
Definition Of Aggravated Insurance Fraud

A person commits the offense of aggravated insurance fraud when, within an 18 month period, he knowingly and by deception [(obtains control) (attempts to obtain control) (causes control to be obtained)] over the property of [(an insurance company) (insurance companies)] by making three or more false claims under any [(policy) (policies)] issued by an insurance company, and intends to permanently deprive the insurance [(company) (companies)] of the use and benefit of that property. [The three or more claims must also arise out of separate [(incidents) (transactions)].]

Committee Note

720 ILCS 5/46-2 (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.59.

Use applicable bracketed material.

13.59
Issues In Aggravated Insurance Fraud

To sustain the charge of aggravated insurance fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly made three or more claims to [(an insurance company) (insurance companies)] under any insurance [(policy) (policies)] issued by any insurance [(company) (companies)]; and

Second Proposition: That the defendant knew that all these claims were false; and

Third Proposition: That each claim allegedly arose out of a separate [(incident) (transaction)]; and

Fourth Proposition: That the defendant knowingly and by deception [(obtained control) (attempted to obtain control) (caused control to be obtained)] over the property of any insurance [(company) (companies)] three times or more by making these false claims; and

Fifth Proposition: That the defendant did so within a period of 18 months; and

Sixth Proposition: That the defendant at all three or more times intended to permanently deprive the insurance company of the use and benefit of the property.

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

Committee Note

720 ILCS 5/46-2 (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.58.

Use applicable bracketed material.

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. See Instruction 5.03.

13.60
Definition Of Insurance Fraud Conspiracy

A defendant commits the offense of insurance fraud conspiracy when, with the intent that the offense of [(insurance fraud) (aggravated insurance fraud)] be committed, he [(knowingly) (intentionally) (recklessly)] agrees with another to commit [(insurance fraud) (aggravated insurance fraud)], he or the other person has done an overt act or acts in furtherance of the agreement, and he is a part of a common scheme or plan to engage in the unlawful activity.

An agreement may be implied from the conduct of the parties even though they acted separately or by different means and did not come together into an express agreement.

To constitute the offense of insurance fraud conspiracy, it is not necessary that the conspirators succeeded in obtaining or exerting control over the insurance company's property.

[The person or persons with whom the defendant agrees to commit aggravated insurance fraud need not be the same for each instance of fraud. That is, the defendant may conspire with different co-conspirators in each of the three or more instances of fraud and still commit insurance fraud conspiracy.]

Committee Note

720 ILCS 5/46-3 (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.61.

Give either Instruction 13.56 (Definition of Insurance Fraud) or Instruction 13.58 (Definition of Aggravated Insurance Fraud), depending on which predicate offense the prosecution accuses defendant of committing.

Use the final bracketed paragraph when the defendant has allegedly agreed to commit aggravated insurance fraud with different co-conspirators on the three or more claimed occasions of fraud.

Because Section 46-3 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

See Instruction 13.60A regarding purported defenses that the statute has excluded.

Use applicable bracketed material.

13.60A
Precluded Defenses To Insurance Fraud Conspiracy

It is not a defense to insurance fraud conspiracy that the person or persons with whom the defendant has allegedly conspired [(have not been prosecuted or convicted) (have been convicted of other offenses) (were not amenable to justice) (have been acquitted) (lacked the capacity to commit an offense)].

Committee Note

720 ILCS 5/46-3(b) and (c) (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993.

Give this instruction when any of the purported defenses are at issue.

Use applicable bracketed material.

13.61
Issues In Insurance Fraud Conspiracy

To sustain the charge of insurance fraud conspiracy, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] agreed with another to commit [(insurance fraud) (aggravated insurance fraud)]; and

Second Proposition: That the defendant did so with the intent that the [(insurance fraud) (aggravated insurance fraud)] would be committed; and

Third Proposition: That [(the defendant) (a co-conspirator)] committed an overt act or acts in furtherance of committing [(insurance fraud) (aggravated insurance fraud)]; and

Fourth Proposition: That the defendant was a part of a common scheme or plan to engage in the unlawful activity.

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

Committee Note

720 ILCS 5/46-3 (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.60.

See Committee Note to Instruction 13.60 regarding the applicable mental states.

Use applicable bracketed material.

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. See Instruction 5.03.

13.62
Definition Of Organizing An Aggravated Insurance Fraud Conspiracy

A person commits the offense of organizing an insurance fraud conspiracy when, with the intent that aggravated insurance fraud be committed, he [(knowingly) (intentionally) (recklessly)] agrees with another to commit aggravated insurance fraud, occupies a position as [(an organizer) (a supervisor) (a financier) [or another position of management]], [(he) (another co-conspirator)] commits an overt act in furtherance of the agreement, and he is a part of a common scheme or plan to engage in the unlawful activity.

An agreement may be implied from the conduct of the parties even though they acted separately or by different means and did not come together into an express agreement.

To constitute the offense of insurance fraud conspiracy, it is not necessary that the conspirators succeed in committing the offense of [(insurance fraud) (aggravated insurance fraud)].

[The person or persons with whom the defendant agrees to commit aggravated insurance fraud need not be the same for each instance of fraud. That is, the defendant may conspire with different co-conspirators in each of the three or more instances of fraud and still commit insurance fraud conspiracy.]

Committee Note

720 ILCS 5/46-4 (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.63.

Give Instruction 13.58 (Definition of Aggravated Insurance Fraud).

Use the final bracketed paragraph when the defendant has allegedly agreed to commit aggravated insurance fraud with different co-conspirators on the three or more claimed occasions of fraud.

When using the phrase "or another position of management," also use all the other alternatives in that bracket separated by commas to illustrate that phrase.

Because Section 46-4 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with People v. Anderson, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* People v. Gean, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), People v. Tolliver, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and People v. Whitlow, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument

alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

See Instruction 13.62A regarding purported defenses that the statute has excluded.

Use applicable bracketed material.

13.62A
Precluded Defenses To Organizing An Aggravated Insurance Fraud Conspiracy

It is not a defense to organizing an insurance fraud conspiracy that the person or persons with whom the defendant has allegedly conspired [(have not been prosecuted or convicted) (have been convicted of other offenses) (were not amenable to justice) (have been acquitted) (lacked the capacity to commit an offense)].

Committee Note

720 ILCS 5/46-4(b) and (c) (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993.

Give this instruction when any of these purported defenses are at issue.

Use applicable bracketed material.

13.63
Issues In Organizing An Aggravated Insurance Fraud Conspiracy

To sustain the charge of organizing an insurance fraud conspiracy, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] agreed with another to commit aggravated insurance fraud; and

Second Proposition: That the defendant did so with the intent that the aggravated insurance fraud be committed; and

Third Proposition: That [(the defendant) (another co-conspirator)] committed an overt act in furtherance of the agreement; and

Fourth Proposition: That the defendant held a position as [(an organizer) (a supervisor) (a financier) [or another position of management]] with respect to the other person[s] within the conspiracy; and

Fifth Proposition: That the defendant was a part of a common scheme or plan to engage in the unlawful activity.

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

Committee Note

720 ILCS 5/46-4 (West, 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.62 and see the Committee Note to that instruction.

When using the phrase "or another position of management," also use all the other alternatives in that bracket separated by commas to illustrate that phrase.

See the Committee Note to Instruction 13.62 regarding the applicable mental states.

Use applicable bracketed material.

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. See Instruction 5.03.

13.64
Definition Of Home Repair Fraud--Agreement Or Contract

A person commits the offense of home repair fraud when he knowingly enters into [(an agreement) (a contract)] [for an amount exceeding $1000] with a person for home repair, and he knowingly

[1] misrepresents a material fact relating to [(the terms of the [(agreement) (contract)]) (the preexisting or existing condition of any portion of the property involved)].

[or]

[2] [(creates) (confirms)] another's impression which is false and which he does not believe to be true.

[or]

[3] promises performance which he does not intend to perform or knows will not be performed.

[or]

[4] uses or employs any [(deception) (false pretense) (false promises)] in order to induce, encourage, or solicit such person to enter into any [(agreement) (contract)].

[In determining the amount of the [(agreement) (contract)], add the amounts of two or more [(agreements) (contracts)] together if they are entered into with the same person by the defendant as part of or in furtherance of a common fraudulent scheme, design, or intention.]

[[(An agreement) (A contract)] may be written or oral.]

Committee Note

815 ILCS 515/3(a)(1), (a)(2), and 4(a) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §§1603(a)(1), (a)(2), and 1604(a) (1991)).

Give Instruction 13.65.

When applicable, give Instruction 13.64A, defining the term “home repair.”

Section 4(a) enhances the penalty for the violation of Section 3(a)(1) or 3(a)(2) from a Class A misdemeanor to a Class 4 felony when the contract or agreement exceeds $1,000. Thus, the Committee has included a bracketed option in the opening paragraph (“[for an amount exceeding $1,000]”) to be given when the amount of the contract or agreement is an issue. When the amount of the contract or agreement is an issue, it should be resolved by the jury. See People v. Mays, 80 Ill.App.3d 340, 399 N.E.2d 718, 35 Ill.Dec. 652 (3d Dist.1980).

Section 4(a) also enhances the penalty if the defendant's conviction is a subsequent offense. However, 720 ILCS 5/111-3(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §111-3(c)

(1991)), added by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues.

When more than one contract or agreement provides the basis for the amount at issue to exceed $1,000, give the bracketed paragraph following the four bracketed alternatives.

When an issue arises whether a contract or agreement must be written, give the bracketed last paragraph.

If the amount of the agreement or contract is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the contract exceeds $1,000, then this instruction would begin "A person commits the offense of home repair fraud in excess of $1,000 when he ...."

Use applicable bracketed material.

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.

13.64A
Definition Of Home Repair

The term "home repair" means the fixing, replacing, altering, converting, modernizing, improving of, or the making of an addition to any real property primarily designed or used as a residence.

[Home repair includes the [(construction) (installation) (replacement) (improvement)] of [(driveways) (swimming pools) (porches) (kitchens) (chimneys) (chimney liners) (garages) (fences) (fallout shelters) (central air conditioning) (central heating) (boilers) (furnaces) (hot water heaters) (electrical wiring) (sewers) (plumbing fixtures) (storm doors) (storm windows) (awnings) [and other improvements to structures within the residence or upon the land adjacent thereto]].]

Committee Note

815 ILCS 515/2(a) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §1602(a) (1991)).

See Section 2(b) for services excluded from the definition of home repair.

Use applicable bracketed material.

13.64B
Definition Of Residence

The word "residence" means a single or multiple family dwelling, including but not limited to [(a single family home) (an apartment building) (a condominium) (a duplex) (a townhouse)] which is used or intended to be used by its occupants as their dwelling place.

Committee Note

815 ILCS 515/2(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §1602(c) (1991)).

Use applicable bracketed material.

13.64C
Deleted

13.65
Issues In Home Repair Fraud--Agreement Or Contract

To sustain the charge of home repair fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly entered into [(an agreement) (a contract)] with a person for home repair; and

[1] *Second Proposition:* That the defendant knowingly misrepresented a material fact relating to [(the terms of the [(agreement) (contract)]) (the preexisting or existing condition of any portion of the property involved)] [(.) (; and)]

[or]

[2] *Second Proposition:* That the defendant knowingly [(created) (confirmed)] another's impression which was false and which he did not believe to be true[(.) (; and)]

[or]

[3] *Second Proposition:* That the defendant knowingly promised performance which he did not intend to perform or knew would not be performed[(.) (; and)]

[or]

[4] *Second Proposition:* That the defendant knowingly used or employed any [(deception) (false pretense) (false promises)] in order to induce, encourage, or solicit such person to enter into any [(agreement) (contract)] [(.) (; and)]

[*Third Proposition:* That the amount of the [(agreement[s]) (contract[s])] exceeded $1,000[(.) (; and)]]

[*Fourth Proposition:* That the defendant entered into such [(agreement[s]) (contract[s])] as part of or in furtherance of a common fraudulent scheme, design, or intention.]

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

Committee Note

815 ILCS 515/3(a)(1), (a)(2), and 4(a) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §§1603(a)(1), (a)(2), and 1604(a) (1991)).

Give Instruction 13.64.

Give the Third Proposition only when the issue arises whether the amount of the contract (or contracts) or agreement (or agreements) exceeded $1,000. See the Committee Note for Instruction 13.64.

Give the Fourth Proposition only when multiple contracts or agreements are in issue. See the Committee Note for Instruction 13.64. The Third Proposition must be given when the Fourth Proposition is given.

Use applicable bracketed material.

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. See Instruction 5.03.

13.66
Definition Of Home Repair Fraud--Unconscionable Agreement Or Contract

A person commits the offense of home repair fraud when he knowingly enters into an unconscionable [(agreement) (contract)] with a person for home repair, requiring payment to the contractor [(of at least $4,000) (of at least $4,000 but not more than $10,000) (more than $10,000)].

[[(An agreement) (A contract)] may be written or oral.]

Committee Note

815 ILCS 515/3(a)(3) and 4(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §§1603(a)(3) and 1604(b) (1991)).

Give Instructions 13.66A and 13.67.

When applicable, give Instruction 13.64A, defining the term "home repair."

Section 4(b) enhances the penalty for the violation of Section 3(a)(3) from a Class 4 to a Class 3 felony when the contract or agreement exceeds $10,000. Thus, the Committee has included a bracketed alternative covering the amount of the contract or agreement. Use the second alternative ("at least $4,000 but not more than $10,000") only when the amount of the contract or agreement is an issue. When the amount of the contract or agreement is an issue, it should be resolved by the jury. See People v. Mays, 80 Ill.App.3d 340, 399 N.E.2d 718, 35 Ill.Dec. 652 (3d Dist.1980).

When an issue arises whether a contract or agreement must be written, give the bracketed last paragraph.

If the amount of the agreement or contract is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the contract exceeds $10,000, then this instruction would begin "A person commits the offense of home repair fraud in excess of $10,000 when he ...."

Use applicable bracketed material.

13.66A
Definition Of Unconscionable

A contract is unconscionable when an unreasonable difference exists between the value of the services, materials, and work to be performed, and the amount charged for those services, materials, and work.

Committee Note

815 ILCS 515/3(a)(3) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §1603(a)(3) (1991)).

Section 3(a)(3) discusses when *prima facie* evidence exists that a contract or agreement is unconscionable. However, People v. Gray, 99 Ill.App.3d 851, 426 N.E.2d 290, 55 Ill.Dec. 315 (5th Dist.1981), holds that the jury should not be instructed in the language of the statute about the *prima facie* effect of certain evidence. According to Gray, the legislature's use of the term "*prima facie*" is a direction to the court on when to submit evidence to the jury and should not be translated into a jury instruction. Also, Gray states that this is a legal term which a jury might read as creating a type of presumption that is constitutionally impermissible in criminal cases.

13.67
Issues In Home Repair Fraud--Unconscionable Agreement Or Contract

To sustain the charge of home repair fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly entered into [(an agreement) (a contract)] with a person for home repair; and

Second Proposition: That the [(agreement) (contract)] required payment to the contractor [(of at least $4,000) (of at least $4,000 but not more than $10,000) (more than $10,000)]; and

Third Proposition: That the defendant knowingly entered into an unconscionable [(agreement) (contract)].

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

Committee Note

815 ILCS 515/3(a)(3) and 4(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §§1603(a)(3) and 1604(b) (1991)).

Give Instruction 13.66.

See the Committee Note to Instruction 13.66 regarding the bracketed alternative covering the amount of the contract or agreement in the Second Proposition.

Use applicable bracketed material.

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. See Instruction 5.03.

13.68
Definition Of Home Repair Fraud--Assumed Business Name Act

A person commits the offense of home repair fraud when he knowingly enters into [(an agreement) (a contract)] [for an amount more than $1,000] with a person for home repair, and knowingly ____ and [(misrepresents) (conceals)] [(his real name) (the name of his business) (his business address)].

[In determining the amount of the [(agreement) (contract)], the amounts of two or more [(agreements) (contracts)] should be added together if they are entered into with the same victim by the defendant as part of or in furtherance of a common fraudulent scheme, design, or intention.]

[[(An agreement) (A contract)] may be written or oral.]

Committee Note

815 ILCS 515/3(a)(4) and 4(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §§1603(a)(4) and 1604(c) (1991)).

Give Instruction 13.69.

When applicable, give Instruction 13.64, defining the term "home repair."

This instruction applies when the defendant fails to comply with the provisions of the Assumed Business Name Act, 805 ILCS 405/4 (formerly Ill.Rev.Stat. ch. 96, §4 (1991)). Insert in the blank the alleged violation of the Assumed Business Name Act.

Section 4(c) enhances the penalty for the violation of Section 3(a)(4) from a Class A misdemeanor to a Class 4 felony when the contract or agreement exceeds $1,000. Thus, the Committee has included a bracketed option in the opening paragraph ("[for an amount exceeding $1,000]") to be given when the amount of the contract or agreement is an issue. When the amount of the contract or agreement is an issue, it should be resolved by the jury. See People v. Mays, 80 Ill.App.3d 340, 399 N.E.2d 718, 35 Ill.Dec. 652 (3d Dist.1980).

Section 4(c) also enhances the penalty if the defendant's conviction is a subsequent offense. However, 720 ILCS 5/111-3(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §111-3(c) (1991)), added by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues.

When more than one contract or agreement provides the basis for the amount at issue to exceed $1,000, give the bracketed second paragraph.

When an issue arises whether a contract or agreement must be written, give the bracketed last paragraph.

If the amount of the agreement or contract is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be

expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the contract exceeds $1,000, then this instruction would begin "A person commits the offense of home repair fraud in excess of $1,000 when he ...."

Use applicable bracketed material.

13.69
Issues In Home Repair Fraud--Assumed Business Name Act

To sustain the charge of home repair fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly entered into [(an agreement) (a contract)] with a person for home repair; and

Second Proposition: That the defendant ____; and

Third Proposition: That the defendant [(misrepresented) (concealed)] [(his real name) (the name of his business) (his business address)] [(.) (; and)]

[*Fourth Proposition:* That the amount of the [(agreement[s]) (contract[s])] was more than $1,000[(.) (; and)]]

[*Fifth Proposition:* That the defendant entered into such [(agreement[s]) (contract[s])] as part of or in furtherance of a common fraudulent scheme, design, or intention.]

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

Committee Note

815 ILCS 515/3(a)(4) and 4(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §§1603(a)(4) and 1604(c) (1991)).

Give Instruction 13.68.

Insert in the blank the violation of the Assumed Business Name Act.

Give the fourth proposition only when the issue arises whether the amount of the contract (or contracts) or agreement (or agreements) exceeded $1,000. See the Committee Note for Instruction 13.68.

Give the fifth proposition only when multiple contracts or agreements are in issue. See the Committee Note for Instruction 13.68. The fourth proposition must be given when the fifth proposition is given.

Use applicable bracketed material.

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. See Instruction 5.03.

13.70
Definition Of Home Repair Fraud--Property Damage Or Noncontracting Misrepresentation

A person commits the offense of home repair fraud when he knowingly

[1] damages the property of a person with the intent to enter into [(an agreement) (a contract)] for home repair.

[or]

[2] misrepresents himself [or another] to be an [(employee) (agent)] of [(any unit of [(federal) (State) (municipal)] government) (any governmental unit) (any public utility)] with the intent to cause a person to enter into, with himself or another, any [(agreement) (contract)] for home repair.

Committee Note

815 ILCS 515/3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §1603(b) (1991)).

Give Instruction 13.71.

When applicable, give Instruction 13.64A, defining the term "home repair."

Use applicable bracketed material.

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.

13.71
Issues In Home Repair Fraud--Property Damage Or Noncontracting Misrepresentation

To sustain the charge of home repair fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly damaged the property of a person; and

Second Proposition: That the defendant did so with the intent to enter into [(an agreement) (a contract)] for home repair.

[or]

First Proposition: That the defendant misrepresented himself [or another] to be an [(employee) (agent)] of [(any unit of [(federal) (State) (municipal)] government) (any governmental unit) (any public utility)]; and

Second Proposition: That the defendant did so with the intent to cause a person to enter into, with the defendant or another, any [(agreement) (contract)] for home repair.

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

Committee Note

815 ILCS 515/3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §1603(b) (1991)).

Give Instruction 13.70.

Use applicable bracketed material.

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. See Instruction 5.03.

13.72
Definition Of Aggravated Home Repair Fraud

A person commits the offense of aggravated home repair fraud when he commits the offense of home repair fraud against [(a person 60 years of age or older) (a disabled person)].

Committee Note

815 ILCS 515/5(a) (West, 1992) (formerly Ill.Rev.Stat. 1211/2, §1605(a) (1991)), as amended by P.A. 87-490, effective January 1, 1992.

Give Instruction 13.73.

Give the definitional instruction for the underlying home repair fraud that corresponds to the offense in the charge--Instruction 13.64, 13.66, 13.68, or 13.70. Also, see the Committee Note to that definitional instruction.

When applicable, give Instruction 13.35B, defining the term “disabled person.”

Sections 5(a), 5(b), and 5(c) enhance the penalty when the contracts or agreements involved exceed a specified dollar amount. See 815 ILCS 515/5(a), 5(b), and 5(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §§1605(a), 1605(b), and 1605(c) (1991)). Thus, the definitional instruction for the underlying home repair fraud offense should be modified as necessary to reflect the amount that is at issue. See the Committee Notes to Instruction 13.64, 13.66, or 13.68 for guidance.

Sections 5(a) and 5(c) also enhance the penalty if the defendant's conviction is a subsequent offense. However, 720 ILCS 5/111-3(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §111-3(c) (1991)), added by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues.

Use applicable bracketed material.

13.73
Issues In Aggravated Home Repair Fraud

To sustain the charge of aggravated home repair fraud, the State must prove the following propositions:

First Proposition: That the defendant committed the offense of home repair fraud against ____; and

Second Proposition: That ____ was [(60 years of age or older) (a disabled person)].

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

Committee Note

815 ILCS 515/5(a) (West, 1992) (formerly Ill.Rev.Stat. ch. 1211/2, §1605(a) (1991)), as amended by P.A. 87-490, effective January 1, 1992.

Give Instruction 13.72.

Give the issues instruction for the underlying home repair fraud that corresponds to the definitional instruction given for the underlying home repair offense in the charge--Instruction 13.65, 13.67, 13.69, or 13.71. See the Committee Note to that issues instruction. Also, see the Committee Note to Instruction 13.72.

When the amount of the contracts or agreements is at issue, modify the issues instruction for the underlying home repair fraud offense to correspond to the definitional instruction for the underlying home repair fraud offense. See the Committee Notes to Instruction 13.65, 13.67, or 13.69 for guidance.

Insert in the blanks the name of the alleged victim of home repair fraud.

Use applicable bracketed material.

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. See Instruction 5.03.

13.74
Definition Of Theft By Control Of Property Represented As Stolen

A person commits the offense of theft when he knowingly [(obtains) (exerts)] control over property in the custody of a law enforcement agency which is explicitly represented to him by [(a law enforcement officer) (an individual acting in behalf of a law enforcement agency)] as being stolen, and he

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that the owner will thereby probably be permanently deprived of its use or benefit.

Committee Note

720 ILCS 5/16-1(a)(5) (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §16-1 (1991)), amended by P.A. 85-1296, effective January 1, 1989; and P.A. 89-377, effective August 18, 1995.

Give Instruction 13.75.

Theft by obtaining or exerting control over property represented as stolen can be a felony if the value of the property exceeds $300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding $300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the $300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin "A person commits the offense of theft of property in excess of $300 when he ...."

Select the bracketed alternatives so that the instruction is no broader than the charging instrument. If a charging instrument charges "obtains" rather than "exerts," then only "obtains" should be utilized. When the pleading is stated in the alternative (e.g. "obtains or exerts"), the instruction should be in the alternative unless the evidence fails to justify a particular alternative. The Committee takes no position on whether alternative pleading is proper under 720 ILCS 5/16-1.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Use applicable paragraphs and bracketed material.

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.

13.75
Issues In Theft By Control Of Property Represented As Stolen

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That a law enforcement agency had custody of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] control over the property in question; and

Third Proposition: That [(a law enforcement officer) (an individual acting in behalf of a law enforcement agency)] explicitly represented to the defendant that the property in question was stolen; and

Fourth Proposition: That the defendant intended to deprive the owner permanently of the use or benefit of the property in question.

[or]

Fourth Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner permanently of the use or benefit.

[or]

Fourth Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that the owner will thereby probably be deprived permanently of its use or benefit.

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

Committee Note

720 ILCS 5/16-1(a)(5) (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §16-1 (1991)), amended by P.A. 85-1296, effective January 1, 1989; and P.A. 89-377, effective August 18, 1995.

Give Instruction 13.74.

Theft by obtaining or exerting control over property represented as stolen can be a felony if the value of the property exceeds $300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding $300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the $300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction,

and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds $300, then this instruction would begin “To sustain the charge of theft of property in excess of $300, the State must prove ....”

Use applicable bracketed material.

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. See Instruction 5.03.

13.77
Definition Of Identity Theft

A person commits the offense of 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)].

[or]

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

[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.

[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.

[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.

[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.

[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.

[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.

[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.

Committee Note

Instruction and Committee Note Approved July 18, 2014

720 ILCS 5/16-30 (West 2013), effective January 1, 2012.

Give Instruction 13.78.

Give Instruction 5.01B, defining "knowledge".

When applicable, give Instruction 13.81, "affirmative defense to identity theft".

When applicable, give Instruction 4.51 defining "personal identification document".

When applicable, give Instruction 4.52 defining "personal identifying information".

In *People v. Sanchez*, 2013 IL App (2d) 120445, 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) 928841.

Use applicable bracketed paragraphs and material.

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.

13.78
Issues In Identity Theft

To sustain the charge of identity theft, the State must prove the following propositions:

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)].

[or]

First Proposition: That the defendant knowingly used [(personal identification) (personal identification document)] of another with the intent to commit the offense of _____.

[or]

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 _____.

[or]

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)].

[or]

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 _____.

[or]

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.

[or]

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.

[or]

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 _____.

[or]

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.

[_____ *Proposition*: That the value of the [(credit) (money) (goods) (services) (property)] [(did not exceed $300 in value) (exceeded $300 in value but did not exceed $2,000 in value) (exceeded $2,000 in value but did not exceed $10,000 in value) (exceeded $10,000 in value but did not exceed $100,000 in value) (exceeded $100,000 in value)].]

[_____ *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 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 any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved July 18, 2014

720 ILCS 5/16-30 (West 2013), effective January 1, 2012, as amended by P.A. 97-1109, effective January 1, 2013. The amendment in P.A. 97-1109 added the eighth First Proposition.

Give Instruction 13.77.

Give Instruction 5.01B, defining “knowledge”.

When applicable, give Instruction 13.81, “affirmative defense to identity theft”.

When applicable, give Instruction 4.51 defining “personal identification document”.
When applicable, give Instruction 4.52 defining “personal identifying information”.

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

Give the first additional Proposition only when the defendant has been charged under section 16-30(a)(1).

Give the second 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.

In *People v. Sanchez*, 2013 IL App (2d) 120445, 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) 928841.

Use applicable bracketed paragraphs and material.

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.

13.79
Definition Of Tattoo

The word "tattoo" means to insert pigment under the surface of the skin of a human being, by pricking with a needle or otherwise, so as to produce an indelible mark or figure visible through the skin.

Committee Note

Instruction and Committee Note Approved April 4, 2014.

720 ILCS 5/12C-35 (West 2013), formerly 720 ILCS 5/12-10 (West 2006), amended and renumbered as § 12C-35 by P.A. 97-1109, § 1-5, effective January 1, 2013.

13.80
Definition Of Pierce

The word “pierce” means to make a hole in the body in order to insert or allow the insertion of any ring, hoop, stud, or other object for the purpose of ornamentation of the body. The word “body” includes the oral cavity.

Committee Note

Instruction and Committee Note Approved April 4, 2014.

720 ILCS 5/12C-40 (West 2013), formerly 720 ILCS 5/12-10.1 (West 2006), amended and renumbered as § 12C-40 by P.A. 97-1109, § 1-5, effective January 1, 2013.

13.81
Affirmative Defense To Identity Theft

It is a defense to the charge of identity theft that the building permit applicant promptly informed the unit of local government that issued the building permit of any change in the [(roofing) (fire sprinkler)] contractor.

Committee Note

Instruction and Committee Note Approved July 18, 2014

720 ILCS 5/16-30 (West 2013), effective January 1, 2012.

Give Instruction 13.77.

Give Instruction 13.78.

Give this Instruction when the defense is raised by the evidence. See 720 ILCS 5/16-30(8) (West 2013).

Use applicable bracketed material.

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