

### 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.