

14.8 UNLAWFUL POSSESSION OF A STOLEN [CREDIT] [DEBIT] CARD

§ 817.60(8), Fla. Stat.

To prove the crime of Unlawful Possession of a Stolen [Credit] [Debit] Card, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) knowingly [possessed] [received] [retained custody of] a [credit] [debit] card.
2. The [credit] [debit] card had been taken from the [possession] [custody] [control] of another without the cardholder's consent.
3. The (defendant) knew the [credit] [debit] card had been taken from the [possession] [custody] [control] of another without the cardholder's consent.
4. At the time (defendant) [possessed] [received] [retained] the [credit] [debit] card, [he] [she] had the intent to impede the recovery of the [credit] [debit] card by the cardholder.

Definitions.

§ 817.58(4), Fla. Stat.

“Credit card” means any instrument or device, whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, electronic benefits transfer (EBT) card, or debit card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit or for use in an automated banking device to obtain any of the services offered through the device.

Possession.

To prove that a person “possessed” a [credit] [debit] card, the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [credit] [debit] card; and b) intentionally exercised control over it.

Give if applicable.

Control can be exercised over a [credit] [debit] card whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to a [credit] [debit] card does not establish that the person intentionally exercised control over it in the absence of additional evidence. Control can be established by proof that the person had direct personal power to control the [credit] [debit] card or the present ability to direct its control by another.

Joint possession.

Possession of [credit] [debit] card may be sole or joint, that is, two or more persons may possess it.

Lesser Included Offenses

UNLAWFUL POSSESSION OF A STOLEN [CREDIT] [DEBIT] CARD—817.60(8)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04	5.1

Comments

Pursuant to § 817.60(8), Fla. Stat., it is not a crime for a retailer or retail employee, in the ordinary course of business, to possess, receive, or return a credit card or debit card that the retailer or retail employee does not know was stolen or to possess, receive, or retain a credit card or debit card that the retailer or retail employee knows is stolen for the purpose of an investigation into the circumstances regarding the theft of the card or its possible unlawful use.

This instruction was adopted in 2013 [131 So. 3d 720] and amended in 2018.