

20.13 [FRAUDULENT USE OF] [OR] [POSSESSION WITH INTENT TO FRAUDULENTLY USE] PERSONAL IDENTIFICATION INFORMATION

§ 817.568(2), Fla. Stat.

To prove the crime of [Fraudulent Use of] [Possession with Intent to Fraudulently Use] Personal Identification Information, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **willfully and without authorization [fraudulently used] [possessed with intent to fraudulently use] personal identification information concerning** (victim).
2. **[He] [She] did so without first obtaining the consent of** (victim).

Definitions. Give as applicable.

“Willfully” means intentionally, knowingly, and purposely.

“Fraudulently” means purposely or intentionally suppressing the truth or perpetrating a deception or both.

§ 817.568(1)(b), Fla. Stat.

“Authorization” means empowerment, permission, or competence to act.

§ 817.568(1)(f), Fla. Stat.

“Personal identification information” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any name, postal or electronic mail address, telephone number, social security number, date of birth, mother’s maiden name, official state or United States issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer’s identification number, Medicaid or food stamp account number, bank account number, credit or debit card number or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized use of such card, unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation, unique electronic identification number, address, or routing code, medical record, telecommunication identifying information or access device, or other number or information that can be used to access a person’s financial resources.

§ 817.568(1)(e), Fla. Stat.

The word “person” includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

Possession.

To prove (defendant) **“possessed personal identification information,”** the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the personal identification information and b) intentionally exercised control over that personal identification information.

Control can be exercised over personal identification information whether the information is carried on a person, near a person, or in a completely separate location. Mere proximity to the personal identification information does not establish that the person intentionally exercised control

over the personal identification information in the absence of additional evidence. Control can be established by proof that (defendant) had direct personal power to control the personal identification information or the present ability to direct its control by another.

Joint Possession.

Possession of personal identification information may be sole or joint, that is, two or more persons may possess the personal identification information.

Reclassifications.

Give only if applicable and only if Fraudulent Use is charged.

§ 817.568(2)(b) and (2)(c), Fla. Stat.

If you find (defendant) guilty of Fraudulent Use of Personal Identification Information, you must then determine whether the State has further proved beyond a reasonable doubt that:

- a. the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated was \$5,000 or more.
- b. the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated was \$50,000 or more.
- c. the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated was \$100,000 or more.
- d. [he] [she] fraudulently used the personal identification information of 10 or more but fewer than 20 persons without their consent.
- e. [he] [she] fraudulently used the personal identification information of 20 or more but fewer than 30 persons without their consent.
- f. [he] [she] fraudulently used the personal identification information of 30 or more persons without their consent.

Give only if applicable but may be used if either Fraudulent Use or Possession with Intent to Fraudulently Use is charged.

§ 817.568(5), Fla. Stat. and § 119.011, Fla. Stat.

If you find (defendant) guilty of [Fraudulent Use of] [Possession with Intent to Fraudulently Use] Personal Identification Information, you must then determine whether the State has further proved beyond a reasonable doubt that the crime was facilitated or furthered by the use of a public record. “Public record” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

Give a. and/or b. only if applicable but may be used if either Fraudulent Use or Possession with Intent to Fraudulently Use is charged.

§ 817.568(10), Fla. Stat.

If you find (defendant) guilty of [Fraudulent Use of] [Possession with Intent to Fraudulently Use] Personal Identification Information, you must then determine whether the State has further proved beyond a reasonable doubt that [he] [she], for the purpose of obtaining or using personal identification information,

- a. misrepresented [himself] [herself] to be [a law enforcement officer] [an employee or representative of a bank, credit card company, credit counseling company or credit reporting agency].**
- b. wrongfully represented that [he] [she] was seeking to assist (victim) with (victim’s) credit history.**

Lesser Included Offenses

**[FRAUDULENT USE OF] [OR] [POSSESSION WITH INTENT TO FRAUDULENTLY USE]
PERSONAL IDENTIFICATION INFORMATION — 817.568(2)**

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Unlawful Possession of the Personal Identification Information of Another Person		817.5685	20.18(a)*
	Attempt	777.04(1)	5.1
	Harassment by use of personal identification information	817.568(4)	20.14
	Unauthorized possession of and other unlawful acts in relation to driver's license or identification card	322.212	

Comments

*It is unclear whether the courts will hold that a person charged solely with fraudulent use of personal identification information is necessarily charged with unlawful possession of personal identification information. In an abundance of caution, the Committee on Standard Jury Instructions in Criminal Cases put § 817.5685, Florida Statutes, in the Category One box.

This instruction was adopted in 2008 [980 So. 2d 1056] and amended in 2016 [202 So. 3d 830], and 2018.