

20.18 [FRAUDULENT CREATION OF] [FRAUDULENT USE OF] [POSSESSION WITH INTENT TO FRAUDULENTLY USE] COUNTERFEIT PERSONAL IDENTIFICATION INFORMATION

§ 817.568(9), Fla. Stat.

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

1. (Defendant) willfully and fraudulently [created] [used] [possessed with intent to fraudulently use] counterfeit or fictitious personal identification information.

Give 2a or 2b as applicable.

2.
 - a. The personal identification information concerned a fictitious individual.
 - b. The personal identification information concerned a real individual whose consent had not first been obtained.
3. [He] [She] did so with intent to use the counterfeit or fictitious personal identification information to commit or to facilitate the commission of a fraud on another person.

Definitions. Give as applicable.

“Willfully” means intentionally, knowingly, and purposely.

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

§ 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)(g), Fla. Stat.

“Counterfeit or fictitious personal identification information” means any counterfeit, fictitious or fabricated information in the similitude of the data just defined to you that, although not truthful or accurate, would in context lead a reasonably prudent person to credit its truthfulness and accuracy.

§ 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 counterfeit or fictitious 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.

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

If you find (defendant) guilty of [Fraudulent Creation of] [Fraudulent Use of] [Possession with Intent to Fraudulently Use] Counterfeit 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.

Reclassification. § 817.568(10), Fla. Stat. Give a. and/or b. as applicable.

If you find (defendant) guilty of [Fraudulent Creation of] [Fraudulent Use of] [Possession with Intent to Fraudulently Use] Counterfeit 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 Offense

FRAUDULENT CREATION, USE OR POSSESSION OF COUNTERFEIT PERSONAL IDENTIFICATION INFORMATION —817.568(9)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Unlawful Possession of Personal Identification Information of Another Person	817.5685	
	Unauthorized possession of and other unlawful acts in relation to driver's license or identification card	322.212	
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 2007 [962 So. 2d 310] and amended in 2016 [202 So. 3d 830] and 2018.