

**20.21 FRAUDULENT USE OF PERSONAL IDENTIFICATION INFORMATION OF A
[DISABLED ADULT] [PUBLIC SERVANT] [VETERAN] [FIRST RESPONDER] [STATE
EMPLOYEE] [FEDERAL EMPLOYEE]**

§ 817.568(11), Fla. Stat.

To prove the crime of Fraudulent Use of Personal Identification Information of a [Disabled Adult] [Public Servant] [Veteran] [First Responder] [State Employee] [Federal Employee], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **willfully and without authorization fraudulently used personal identification information concerning** (victim).
2. **At the time,** (victim) **was** [a disabled adult] [a public servant] [a veteran] [a first responder] [a state employee] [a federal employee].
3. (Defendant) **did so without first obtaining consent of** (victim).

Definitions.

“Willfully” means intentionally, knowingly, and purposely.

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

§ 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.

Give as applicable.

§ 825.101(3), Fla. Stat.

“Disabled adult” means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.

§ 838.014(7), Fla. Stat.

“Public servant” means any officer or employee of a governmental entity, including any

executive, legislative, or judicial branch officer or employee.

Give if applicable. § 838.014(7)(b) and (7)(c), Fla. Stat.

“Public servant” also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function or a candidate for election or appointment to any of these officer positions; or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

§ 838.014(4), Fla. Stat.

“Governmental entity” means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

§ 1.01(14), Fla. Stat.

“Veteran” means a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges.

§ 125.01045(2), Fla. Stat.

“First responder” means a law enforcement officer, a firefighter, or an emergency medical technician or paramedic who is employed by the state or a local government. [A volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is also considered a first responder of the state or local government for purposes of this section.]

§ 943.10(10), Fla. Stat.

“Law enforcement officer” means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

§ 633.102(9), Fla. Stat.

“Firefighter” means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services.

§ 401.23(17), Fla. Stat.

“Paramedic” means a person who is certified by the Department of Health to perform basic and advanced life support.

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

If you find (defendant) guilty of Fraudulent Use of Personal Identification Information of a [Disabled Adult] [Public Servant] [Veteran] [First Responder] [State Employee] [Federal Employee], 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 Use of Personal Identification Information of a [Disabled Adult] [Public Servant] [Veteran] [First Responder] [State Employee] [Federal Employee], 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 PERSONAL IDENTIFICATION INFORMATION OF A [DISABLED ADULT] [PUBLIC SERVANT] [VETERAN] [FIRST RESPONDER] [STATE EMPLOYEE] [FEDERAL EMPLOYEE] — 817.568(11)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*Fraudulent Use of Personal Identification Information		817.568(2)(a)	20.13
*Unlawful Possession of Personal Identification Information of Another		817.5685	20.18(a)
	Unauthorized possession of and other unlawful acts in relation to driver's license or identification card	322.212	
	Attempt	777.04(1)	5.1

Comments

*The part of § 817.568(2)(a), Fla. Stat., that covers the defendant willfully and without authorization fraudulently using the victim's personal identification information is a necessary lesser included offense of this crime. However, it is unclear whether the courts will hold that someone charged with fraudulent use of personal identification information is necessarily charged with possession with intent to fraudulently use personal identification information or unlawful possession of personal identification information. In an abundance of caution, the Committee on Standard Jury Instructions in Criminal Cases put all of § 817.568(2)(a), Fla. Stat., and § 817.5685, Fla. Stat., in the Category One box.

Both § 817.568(6), Fla. Stat., and § 817.568(11), Fla. Stat., criminalize Fraudulent Use of Personal Identification Information of a Person 60 Years of Age or Older. While both are second degree felonies, § 817.568(6), Fla. Stat., is listed in level 8 and § 817.568(11), Fla. Stat., is unlisted, which would make it a level 4, according to § 921.0023, Fla. Stat. If the State alleges that the defendant violated § 817.568(11), Fla. Stat., and that the victim was 60 years of age or older, the trial judge should instruct using the appropriate parts of Instruction 20.15.

This instruction was adopted in 2015 [176 So. 3d 938] and amended in 2016 [202 So. 3d 830] and 2018.