

20.6(a) WELFARE FRAUD — [SELLING] [ATTEMPTING TO SELL] AN EBT CARD
§ 414.39(2)(c), Fla. Stat.

To prove the crime of Welfare Fraud — [Selling] [Attempting to Sell] an EBT card, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) possessed two or more electronic benefits transfer (EBT) cards.
2. The EBT cards were issued to someone other than (defendant).
3. (Defendant) [sold] [attempted to sell] one or more of these EBT cards.

Definitions.

An “EBT card” is issued by the Department of Children and Families or its agent to obtain food assistance benefits payments or temporary case assistance payments, including refugee cash assistance payments, asylum applicant payments, and child support disregard payments from the Department.

To “possess” an EBT card means the defendant was aware of the presence of the EBT card and exercised control over the EBT card.

Give if applicable.

An “attempt” to commit a crime is the formation of an intent to commit that crime and the doing of some act toward the commission of the crime other than mere preparation to commit the crime.

Enhancement. Give if applicable if the jury finds the defendant guilty of Welfare Fraud — [Selling] [Attempting to Sell] an EBT card. § 414.39(2)(c), Fla. Stat.

Now that you have found the defendant guilty of Welfare Fraud — [Selling] [Attempting to Sell] an EBT card, you must further determine whether the State has proven beyond a reasonable doubt that the defendant was previously convicted of the same crime.

“Conviction” means a determination of guilt which is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

If a party requests a more complete instruction on the concept of possession, the trial judge can insert language from Instruction 25.7 (Possession of a Controlled Substance).

This instruction can be used for Welfare Fraud — [Selling] [Attempting to Sell] an EBT Card based on a prior conviction. For Felony Welfare Fraud — [Selling] [Attempting to Sell] an EBT Card based on a prior conviction, it is error to inform the jury of prior convictions until the verdict on the underlying Welfare Fraud — [Selling] [Attempting to Sell] an EBT Card is rendered. Therefore, if the information or indictment contains an allegation of a prior Welfare Fraud — [Selling] [Attempting to Sell] an EBT Card conviction, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty of Welfare Fraud — [Selling] [Attempting to Sell] an EBT Card, the historical fact of prior convictions shall be determined separately by the jury in a bifurcated proceeding. *See State v. Harbaugh, 754 So. 2d 691 (Fla. 2000).*

This instruction was adopted in 2017.