

**CRIMINAL POSSESSION OF PUBLIC BENEFIT CARDS
(Committed on or after Nov. 1, 1995)**

**CRIMINAL POSSESSION OF PUBLIC BENEFIT CARDS
IN THE THIRD DEGREE
(Five or more Public Benefit Cards)
Penal Law § 158.40**

**CRIMINAL POSSESSION OF PUBLIC BENEFIT CARDS
IN THE SECOND DEGREE
(Ten or more Public Benefit Cards)
Penal Law § 158.45**

**CRIMINAL POSSESSION OF PUBLIC BENEFIT CARDS
IN THE FIRST DEGREE
(Twenty-Five or more Public Benefit Cards)
Penal Law § 158.50**

The (*specify*) count is Criminal Possession of Public Benefit Cards in the (*specify*) Degree.

Under our law, a person is guilty of Criminal Possession of Public Benefit Cards in the (*specify*) Degree when that person with intent to defraud, deceive or injure another, knowingly possesses (*specify statutory number*) or more public benefit cards in a name or names other than the person's own name.

The following terms used in that definition have a special meaning:

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.¹

INTENT means conscious objective or purpose. Thus, a person acts with intent to defraud, deceive, or injure another

¹ Penal Law § 10.00(8). If necessary, an expanded definition of "possession" is available in the section on Instructions of General Applicability under Possession.

when that person's conscious objective or purpose is to do so.²

A person KNOWINGLY possesses public benefit cards in a name or names other than the person's own name when that person is aware that he or she is in possession of public benefit cards in a name or names other than the person's own name.³

PUBLIC BENEFIT CARD means any medical assistance card, food stamp assistance card, public assistance card, or any other identification, authorization card or electronic access device issued by the state or social services district⁴ which entitles a person to obtain public assistance benefits under a local, state, or federal program administered by the state, its political subdivisions, or social services districts.⁵

[Add If applicable:

Under our law, a person who possesses five or more public benefit cards in a name or names other than his or her own is presumed to possess the same with intent to defraud, deceive or injure another.

What that means is that if the People prove beyond a reasonable doubt that the defendant possessed five or more public benefit cards in a name or names other than his or her own name, then you may, but are not required to, infer that the defendant possessed such cards with intent to defraud, deceive

² See Penal Law § 15.05(1). If necessary, an expanded definition of "intent" is available in the section on Instructions of General Applicability under Culpable Mental States.

³ See Penal Law § 15.05(2). If necessary, an expanded definition of "knowingly" is available in the section on Instructions of General Applicability under Culpable Mental States.

⁴ At this point the statute states: "as defined in subdivision seven of section two of the social services law." If in issue, the definition should be separately charged.

⁵ Penal Law § 158.00(1)(a)

or injure another. ⁶

You must not rely on that presumption if there is evidence tending to show that the defendant did not possess such public benefit card or cards with intent to defraud, deceive or injure another.^{7]}

In order for you to find the defendant guilty of this crime, the People are required to prove from all of the evidence in the case beyond a reasonable doubt both of the following two elements:

1. That on or about (date) in the county of (county), the defendant (defendant's name), possessed (specify statutory number) or more public benefit cards in a name or names other than the defendant's own name; and

⁶ Penal Law § 158.00(2)(a). Subdivision (2)(b) of that section, however, states: The presumption established by this subdivision shall not apply to:

(1) any employee or agent of the department of social services to the extent that he or she possesses such cards in the course of his or her official duties; or

(2) any person to the extent that he [or] she possesses a public benefit card or cards issued to a member or members of his or her immediate family or household with the consent of the cardholder; or

(3) any person providing home health services or personal care services pursuant to title eleven of article five of the social services law, or any agent or employee of a congregate care or residential treatment facility or foster care provider, to the extent that in the course of his or her duties, he or she possesses public assistance cards issued to persons under his or her care.

If in issue, the appropriate foregoing subdivision should be charged to the jury.

⁷ Penal Law § 158.00(2)(c). With respect to this last sentence, the statute states: "In any action tried before a jury, the jury shall be so instructed."

2. The defendant did so knowingly and with intent to defraud, deceive or injure another.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.