

**CRIMINAL USE OF AN ACCESS DEVICE  
IN THE FIRST DEGREE  
Penal Law § 190.76  
(Committed on or after Nov. 1, 1996)**

The (*specify*) count is Criminal Use of an Access Device in the First Degree.

Under our law, a person is guilty of Criminal Use of an Access Device in the First Degree when he or she knowingly uses an access device without consent of an owner thereof with intent to unlawfully obtain telecommunications services on behalf of himself or herself [or a third person] and so obtains such services with a value in excess of one thousand dollars.

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

ACCESS DEVICE means any telephone calling card number, credit card number, account number, mobile identification number, electronic serial number or personal identification number that can be used to obtain telephone service.<sup>1</sup>

A person KNOWINGLY uses an access device without consent of an owner thereof when that person is aware that he or she is doing so.<sup>2</sup>

INTENT means conscious objective or purpose. Thus, a person acts with intent to unlawfully obtain telecommunications services on behalf of himself or herself [or a third person] when

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<sup>1</sup> See Penal Law §§190.75, 190.76, and 155.00(7-c).

<sup>2</sup> 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.

that person's conscious objective or purpose is to do so.<sup>3</sup>

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

1. That on or about (date), in the County of (County), the defendant, (defendant's name) used an access device without consent of an owner thereof;
2. That the defendant did so knowingly and with intent to unlawfully obtain telecommunications services on behalf of himself or herself or a third person; and
3. That the defendant obtained such services with a value in excess of one thousand dollars.

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

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

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<sup>3</sup> Penal Law § 15.05 (1).