

IMPERSONATION; THEFT OF IDENTITY
(N.J.S.A. 2C:21-17a)

Count_____ of the indictment charges defendant with impersonation or theft of identity.

[READ COUNT OF INDICTMENT]

The pertinent part of the statute on which the indictment is based provides that a person is guilty of theft of identity or impersonation if he or she:

[CHOOSE APPLICABLE SUBSECTION(S)]

(1) Impersonates another or assumes a false identity and does an act in such assumed character or false identity for the purpose of obtaining a benefit for himself or another or to injure or defraud another;

OR

(2) Pretends to be a representative of some person or organization and does an act in such pretended capacity for the purpose of obtaining a benefit for himself or another or to injure or defraud another;

OR

(3) Impersonates another, assumes a false identity or makes a false or misleading statement regarding the identity of any person, in an oral or written application for services, for the purpose of obtaining services;

OR

(4) Obtains any personal identifying information pertaining to another person and uses that information, or assists another person in using the information, in order to assume the identity of or represent himself as another person, without that person's authorization and with the purpose to fraudulently obtain or attempt to obtain a benefit or services, or avoid the payment of debt or other legal obligation or avoid prosecution for a crime by using the name of the other person;

OR

(5) Impersonates another, assumes a false identity or makes a false or misleading statement, in the course of making an oral or written application for services, with the purpose of avoiding payment for prior services.

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[CHARGE IF A VIOLATION OF N.J.S.A. 2C:21-17a(1) IS ALLEGED]

In order for defendant to be found guilty of this offense, the State must prove the following three elements of the crime beyond a reasonable doubt:

1. defendant knowingly¹ impersonated another or assumed a false identity;
2. defendant knowingly did an act in such assumed character or false identity; and
3. defendant's purpose in doing that act was to obtain a benefit for (himself/herself), or to obtain a benefit for another, or to injure another, or to defraud another.

The first element that the State must prove beyond a reasonable doubt is that defendant knowingly impersonated another or knowingly assumed a false identity. To "impersonate" means to assume the character or appearance of another, or to imitate the appearance, voice, or manner of another.² Here, the State alleges that the defendant impersonated another or assumed a false identity by [describe].

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that the conduct is of that nature or that such circumstances exist or the person is aware of a high probability of their existence. A person acts knowingly with respect to a result of the conduct if he/she is aware that it is practically certain that the conduct will cause a result. "Knowing," "with knowledge," or equivalent terms have the same meaning.

Knowledge is a condition of the mind. It cannot be seen. It can only be determined by inference from defendant's conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and conduct and from all he/she said and did at the particular time and place and from all surrounding circumstances established by the evidence.

¹ After much debate in the Criminal Model Jury Charge Committee, the mental state of "knowingly" has been included throughout this charge. A majority of Committee members felt that the mental state of knowingly governs this statute. N.J.S.A. 2C:2-2c(3). However, a minority of Committee members felt that the mental state of purposely governs the statute. N.J.S.A. 2C:2-2c(1). The charge, as written, implements the majority's view.

² The American Heritage Dictionary of the English Language, Fourth Edition, 2000.

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The second element the State must prove beyond a reasonable doubt is that defendant knowingly did an act in that assumed character or false identity.

The third element that the State must prove beyond a reasonable doubt is that defendant purposely: [**CHOOSE APPROPRIATE:** obtained a benefit for (himself/herself); obtained a benefit for another; injured another; or defrauded another].

“Obtain” means (1) in relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to oneself or another; or (2) in relation to labor or service, to secure performance thereof.³ “Benefit” means, but is not limited to, any property, any pecuniary amount, any services, any pecuniary amount sought to be avoided or any injury or harm perpetrated on another where there is no pecuniary value.⁴ To defraud means to deprive a person of property or any interest, estate, or right by deceit, artifice, trickery or cheat. To injure means to cause any damage that may ensue to the good name, standing, position or general reputation of (victim’s name). It may also mean to misrepresent or injuriously affect the sentiments, opinions, conduct, character, prospects, interests or rights of another.⁵

A person acts purposely with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if the individual is aware of the existence of such circumstances or the individual believes or hopes that they exist. “With purpose,” “designed,” “with design” or equivalent terms have the same meaning.

The term purposely refers to a condition of the mind. A condition of the mind cannot be seen. It can only be determined by inference from defendant’s conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he had a certain state of mind when he did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his acts and conduct and from all he said and did at the particular time and place and from all surrounding circumstances established by the evidence.

³ N.J.S.A. 2C:20-1f.

⁴ N.J.S.A. 2C:21-17a.

⁵ See Cannel, New Jersey Criminal Code Annotated, comment 3 on N.J.S.A. 2C:21-1 (1998) for legislative history behind expansive definition of injury.

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[CHARGE IF A VIOLATION OF N.J.S.A. 2C:21-17a(2) IS ALLEGED]

In order for defendant to be found guilty of this offense, the State must prove the following three elements of the crime beyond a reasonable doubt:

1. defendant knowingly pretended to be a representative of a person or organization;
2. defendant knowingly did an act in such pretended capacity; and
3. defendant's purpose in doing that act was to obtain a benefit for (himself/herself), or to obtain a benefit for another, or to injure another, or to defraud another.

The first element that the State must prove beyond a reasonable doubt is that defendant knowingly pretended to be a representative of a person or organization. **[CHARGE IF APPROPRIATE:** In addition to its ordinary meaning, "person" includes any individual or entity or enterprise⁶ capable of holding a legal or beneficial interest in property.] Here, the State contends the defendant pretended to be a representative of [person or organization] by [describe].

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that the conduct is of that nature or that such circumstances exist or the person is aware of a high probability of their existence. A person acts knowingly with respect to a result of the conduct if he/she is aware that it is practically certain that the conduct will cause a result. "Knowing," "with knowledge," or equivalent terms have the same meaning.

Knowledge is a condition of the mind. It cannot be seen. It can only be determined by inference from defendant's conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and conduct and from all he/she said and did at the particular time and place and from all surrounding circumstances established by the evidence.

The second element that the State must prove beyond a reasonable doubt is that defendant

⁶ N.J.S.A. 2C:20-1m. When necessary to provide as part of the charge, that same section defines "enterprise" to include "any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact, although not a legal entity, and it includes illicit as well as licit enterprises and governmental as well as

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knowingly did an act in such pretended capacity.

The third element that the State must prove is that the defendant had the purpose to: **[CHOOSE APPROPRIATE:** obtain a benefit for (himself/herself); obtain a benefit for another; or injure another].

"Benefit" means, but is not limited to, any property, any pecuniary amount, any services, any pecuniary amount sought to be avoided or any injury or harm perpetrated on another where there is no pecuniary value. To injure means to cause any damage that may ensue to the good name, standing, position or general reputation of the purported author of the statement. It may also mean to misrepresent or injuriously affect the sentiments, opinions, conduct, character, prospects, interest or rights of another.⁷

A person acts purposely with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if the individual is aware of the existence of such circumstances or the individual believes or hopes that they exist. "With purpose," "designed," "with design" or equivalent terms have the same meaning.

The term purposely refers to a condition of the mind. A condition of the mind cannot be seen. It can only be determined by inference from defendant's conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he had a certain state of mind when he did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his acts and conduct and from all he said and did at the particular time and place and from all surrounding circumstances established by the evidence.

[CHARGE IF A VIOLATION OF N.J.S.A. 2C:21-17a(3) IS ALLEGED]

In order for defendant to be found guilty of this offense, the State must prove the following three elements of the crime beyond a reasonable doubt:

1. defendant knowingly **[CHOOSE APPROPRIATE:** impersonated another, or assumed a false identity, or

other entities."

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⁷ See Cannel, New Jersey Criminal Code Annotated, comment 3 on N.J.S.A. 2C:21-1 (1998) for legislative history behind expansive definition of injury.

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- made a false statement regarding the identity of any person, or
made a misleading statement regarding the identity of any person];
2. defendant's impersonation, assumption of false identity, or false or misleading statement regarding identity was made in an oral or written application for services; and
 3. defendant had the purpose to obtain services.

The first element that the State must prove beyond a reasonable doubt is that defendant knowingly either: impersonated another person; assumed a false identity; made a false statement regarding the identity of any person; or made a misleading statement regarding the identity of any person. [**CHOOSE APPROPRIATE:** (To "impersonate" means to assume the character or appearance of another, or to imitate the appearance, voice, or manner of another.) (I have already instructed you on the meaning of "impersonate.")] [**CHARGE IF APPROPRIATE:** In addition to its ordinary meaning, "person" includes any individual or entity or enterprise⁸ capable of holding a legal or beneficial interest in property.] Here, the State contends that defendant [describe conduct].

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that the conduct is of that nature or that such circumstances exist or the person is aware of a high probability of their existence. A person acts knowingly with respect to a result of the conduct if he/she is aware that it is practically certain that the conduct will cause a result. "Knowing," "with knowledge," or equivalent terms have the same meaning.

Knowledge is a condition of the mind. It cannot be seen. It can only be determined by inference from defendant's conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and conduct and from all he/she said and did at the particular time and place and from all surrounding circumstances established by the evidence.

The second element that the State must prove beyond a reasonable doubt is that defendant's

⁸ N.J.S.A. 2C:20-1m. When necessary to provide as part of the charge, that same section defines "enterprise" to include "any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact, although not a legal entity, and it includes illicit as well as licit enterprises and governmental as well as

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impersonation, assumption of false identity, or false or misleading statement regarding identity was made in an oral or written application for services, namely [describe services for which defendant applied].

The third element that the State must prove beyond a reasonable doubt is that defendant had the purpose to obtain services.

A person acts purposely with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if the individual is aware of the existence of such circumstances or the individual believes or hopes that they exist. “With purpose,” “designed,” “with design” or equivalent terms have the same meaning.

The term purposely refers to a condition of the mind. A condition of the mind cannot be seen. It can only be determined by inference from defendant’s conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he had a certain state of mind when he did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his acts and conduct and from all he said and did at the particular time and place and from all surrounding circumstances established by the evidence.

[CHARGE IF A VIOLATION OF N.J.S.A. 2C:21-17a(4) IS ALLEGED]

In order for defendant to be found guilty of this offense, the State must prove the following four elements of the crime beyond a reasonable doubt:

1. defendant knowingly obtained personal identifying information pertaining to another person;
2. defendant purposely⁹ used the information or assisted another person to use the information in order to assume the identity of another person or to represent (himself/herself) as another person;
3. defendant knew that he/she lacked (victim’s name)’s authorization to use his/her personal information; and

other entities.”

⁹ A majority of the Committee felt that this use of “purposely” was an appropriate exception to its decision to use knowingly throughout the charge.

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4. defendant had the purpose to [**CHOOSE APPROPRIATE:**
fraudulently obtain a benefit or services, or
attempt to obtain a benefit or services, or
avoid the payment of debt or other legal obligation, or
avoid prosecution for a crime by using the name of the other person].

The first element that the State must prove beyond a reasonable doubt is that defendant knowingly obtained any personal identifying information pertaining to another person. [**Charge if appropriate:** In addition to its ordinary meaning, “person” includes any individual or entity or enterprise¹⁰ capable of holding a legal or beneficial interest in property.] “Personal identifying information” means any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual and includes, but is not limited to, the name, address, telephone number, date of birth, social security number, official State issued identification number, employer or taxpayer number, place of employment, employee identification number, demand deposit account number, savings account number, credit card number, mother's maiden name, unique biometric data, such as fingerprint, voice print, retina or iris image or other unique physical representation, or unique electronic identification number, address or routing code of the individual.¹¹ Here, the State alleges that the defendant obtained the [specify personal information] of [specify person].

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that the conduct is of that nature or that such circumstances exist or the person is aware of a high probability of their existence. A person acts knowingly with respect to a result of the conduct if he/she is aware that it is practically certain that the conduct will cause a result. “Knowing,” “with knowledge,” or equivalent terms have the same meaning.

Knowledge is a condition of the mind. It cannot be seen. It can only be determined by inference from defendant's conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she

¹⁰ N.J.S.A. 2C:20-1m. When necessary to provide as part of the charge, that same section defines “enterprise” to include “any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact, although not a legal entity, and it includes illicit as well as licit enterprises and governmental as well as other entities.”

¹¹ N.J.S.A. 2C:20-1v.

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did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and conduct and from all he/she said and did at the particular time and place and from all surrounding circumstances established by the evidence.

The second element that the State must prove beyond a reasonable doubt is that defendant purposely either used that information or assisted another person in using the information in order to assume the identity of another person or to represent (himself/herself) as another person. Here, the State alleges that defendant [describe use or assisted use].

A person acts purposely with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if the individual is aware of the existence of such circumstances or the individual believes or hopes that they exist. “With purpose,” “designed,” “with design” or equivalent terms have the same meaning.

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The third element the State must prove beyond a reasonable doubt is that defendant knew that he/she lacked the authorization of [victim’s name] to use his/her personal information.

**[CHARGE IF DEFENDANT IS ALLEGED TO HAVE
FRAUDULENTLY OBTAINED A BENEFIT OR SERVICES,
AVOIDED THE PAYMENT OF DEBT OR OTHER LEGAL OBLIGATION, OR
AVOIDED PROSECUTION FOR A CRIME BY USING THE NAME OF THE OTHER
PERSON IN ORDER TO FULFILL THE FIFTH ELEMENT OF N.J.S.A. 2C:21-17a(4).]**

The fourth element that the State must prove beyond a reasonable doubt is that defendant had the purpose to: **[CHOOSE APPROPRIATE:** fraudulently obtain a benefit or services; avoid the payment of debt or other legal obligation; or avoid prosecution for a crime by using the name of the

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other person].

[Choose appropriate: ("Benefit" means, but is not limited to, any property, any pecuniary amount, any services, any pecuniary amount sought to be avoided or any injury or harm perpetrated on another where there is no pecuniary value.) (I have already instructed you on the meaning of "benefit.")]

**[CHARGE IF DEFENDANT IS ALLEGED TO HAVE ATTEMPTED TO
OBTAIN A BENEFIT OR SERVICES
UNDER THE FIFTH ELEMENT OF N.J.S.A. 2C:21-17a(4).]**

The fourth element that the State must prove beyond a reasonable doubt is that defendant purposely attempted to obtain a benefit or services.

[Choose appropriate: ("Benefit" means, but is not limited to, any property, any pecuniary amount, any services, any pecuniary amount sought to be avoided or any injury or harm perpetrated on another where there is no pecuniary value.) (I have already instructed you on the meaning of "benefit.")]

The law provides that a person attempts to obtain a benefit or services when, acting purposely, he/she: ¹²

[Select appropriate section]

Engaged in conduct that would cause him to fraudulently obtain a benefit or services if the attendant circumstances were as a reasonable person would believe them to be;

[or]

Did or omitted to do anything with the purpose of fraudulently obtaining a benefit or services without further conduct on his/her part. This means that the defendant(s) did something designed to fraudulently obtain a benefit or services without having to take any further action.

[or]

Did or omitted to do anything which, under the circumstances as a reasonable person would believe them to be, was an act or omission constituting a substantial step in the course of conduct planned to culminate in him/her fraudulently obtaining a benefit or services. The step taken must be one that is strongly corroborative of the defendant's criminal purpose. The accused must be shown

¹² Because all attempts must be purposeful, State v. Rhett, 136 N.J. 476, 485 (1994); State v. Robinson, 127 N.J. 3, 7 (1992), and because other portions of this statute include the requirement of purpose, the language in N.J.S.A. 2C:5-1a, "acting with the kind of culpability otherwise required for the commission of the crime," should not be charged.

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to have had a firmness of criminal purpose in light of the step(s) he/she had already taken. These preparatory steps must be substantial and not just very remote preparatory acts.¹³

[CHARGE IF A VIOLATION OF N.J.S.A. 2C:21-17a(5) IS ALLEGED]

In order for defendant to be found guilty of this offense, the State must prove the following three elements of the crime beyond a reasonable doubt:

1. defendant knowingly [**CHOOSE APPROPRIATE:**
impersonated another, or
assumed a false identity, or
made a false statement, or
made a misleading statement];
2. the impersonation, assumption of false identity, false statement, or misleading statement occurred in the course of him/her making an oral or written application for services; and
3. the impersonation, assumption of false identity, false statement, or misleading statement was made with the purpose of avoiding payment for prior services.

The first element that the State must prove beyond a reasonable doubt is that defendant knowingly: [**CHOOSE APPROPRIATE:** impersonated another; assumed a false identity; made a false statement; or made a misleading statement]. [**Choose appropriate:** (To “impersonate” means to assume the character or appearance of another, or to imitate the appearance, voice, or manner of another.) (I have already instructed you on the meaning of “impersonate.”)] Here, the State alleges that defendant [describe conduct].

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that the conduct is of that nature or that such circumstances exist or the person is aware of a high probability of their existence. A person acts knowingly with respect to a result of the conduct if he/she is aware that it is practically certain that the conduct will cause a result. “Knowing,” “with knowledge,” or equivalent terms have the same meaning.

Knowledge is a condition of the mind. It cannot be seen. It can only be determined by inference from defendant’s conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State

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If impossibility or renunciation is at issue, consult the full Model Jury Charge on attempt. N.J.S.A.

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produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and conduct and from all he/she said and did at the particular time and place and from all surrounding circumstances established by the evidence.

The second element that the State must prove beyond a reasonable doubt is that defendant's [CHOOSE APPROPRIATE: impersonation, assumption of false identity, false statement, or misleading statement] occurred in the course of making an oral or written application for services.

The third element that the State must prove beyond a reasonable doubt is that defendant had the purpose to avoid payment for prior services.

A person acts purposely with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if the individual is aware of the existence of such circumstances or the individual believes or hopes that they exist. "With purpose," "designed," "with design" or equivalent terms have the same meaning.

The term purposely refers to a condition of the mind. A condition of the mind cannot be seen. It can only be determined by inference from defendant's conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he had a certain state of mind when he did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his acts and conduct and from all he said and did at the particular time and place and from all surrounding circumstances established by the evidence.

**[ADDITIONAL INFERENCE APPLICABLE TO
ALLEGED VIOLATIONS OF N.J.S.A. 2C:21-17a(5)]**

Purpose to avoid payment for prior services may be inferred from proof that defendant has not made full payment for prior services and has impersonated another, assumed a false identity or made a false or misleading statement regarding the identity of any person in the course of making

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oral or written application for those services.¹⁴ However, you are never required or compelled to draw this inference. It is your exclusive province to determine whether the facts and circumstances shown by the evidence support any inference and you are always free to accept them or reject them if you wish.

[RESUME CHARGE IN ALL CASES]

If the State has proven each of the elements of this crime beyond a reasonable doubt, then you must find defendant guilty of impersonation/identity theft. On the other hand, if the State has failed to prove any element beyond a reasonable doubt, you must find him/her not guilty.¹⁵

However, if you find defendant guilty beyond a reasonable doubt, you must then go on to consider whether the State has proven the following beyond a reasonable doubt:

**[CHARGE IF SECOND DEGREE ALLEGED
BASED UPON NUMBER OF VICTIMS]¹⁶**

You must determine the number of individuals whose identity or personal information defendant is alleged to have stolen or misused. Specifically, indicate on the verdict sheet whether the State has proven beyond a reasonable doubt that the number of individuals whose identities were stolen or misused was:

- a. five or more;
- b. at least two but less than five; or
- c. only one.

**[CHARGE IF SECOND DEGREE ALLEGED
BASED UPON DERIVATION OF BENEFIT]**

You must determine whether the State has proven beyond a reasonable doubt that defendant derived a benefit as a result of the impersonation or identity theft(s). [As I have already said,] "Benefit" means, but is not limited to, any property, any pecuniary amount, any services, any pecuniary amount sought to be avoided or any injury or harm perpetrated on another where there is no pecuniary value. Please indicate whether the State has proven that defendant derived a benefit from the alleged impersonation or identity theft beyond a reasonable doubt by marking "yes" or "no"

¹⁴ In the appropriate case, the jury may be advised that purpose may be inferred from the presence of the factors set forth in N.J.S.A. 2C:21-17a(5) "upon proof of the basic fact." N.J.R.E. 303(b). To warrant submission to the jury, the evidence must be sufficient that "a reasonable juror on the evidence as a whole, including the existence of the basic fact, could find the presumed fact beyond a reasonable doubt." N.J.R.E. 303(b); N.J.S.A. 2C:1-13e. If the jury is instructed as to an inference permitted by N.J.S.A. 2C:21-17a(5), care should be taken to avoid the use of the term "presumption" and it should be clearly stated that the inference is only permissive in nature. N.J.R.E. 303(b), (c).

¹⁵ If the indictment only charges a fourth degree crime, then stop here.

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on your verdict sheet.

If you have both determined that defendant is guilty of theft of identity and found that defendant derived a benefit from the theft, then you must go on to determine the value of that benefit. Specifically, indicate on the verdict sheet if the State has proven beyond a reasonable doubt that the benefit that defendant derived has a value that:

[CHOOSE APPROPRIATE SECTIONS]

- a. is \$75,000 or more;
- b. at least \$500, but is less than \$75,000;
- c. is less than \$500.

If you find that the benefit(s) derived were taken in impersonations or identity thefts committed pursuant to one scheme or course of conduct, the amounts may be added together to form a single total amount, whether derived from one source or several sources.¹⁷

**[CHARGE IF THIRD DEGREE ALLEGED
BASED UPON NUMBER OF VICTIMS]:**

You must determine the number of individuals whose identity or personal information defendant is alleged to have stolen or misused. Specifically, indicate on the verdict sheet whether the State has proven beyond a reasonable doubt that the number of individuals whose identities were stolen or misused was:

- a. at least two but less than five; or
- b. only one.

**[CHARGE IF THIRD DEGREE ALLEGED
BASED UPON DERIVATION OF BENEFIT]**

You must determine whether the State has proven beyond a reasonable doubt that defendant derived a benefit as a result of the impersonation or identity theft(s). [As I have already said,] "Benefit" means, but is not limited to, any property, any pecuniary amount, any services, any pecuniary amount sought to be avoided or any injury or harm perpetrated on another where there is no pecuniary value. Please indicate whether the State has proven that defendant derived a benefit from the alleged impersonation or identity theft beyond a reasonable doubt by marking "yes" or "no" on your verdict sheet.

¹⁶ The jury should not be advised of the degree of the crime it is considering.

¹⁷ N.J.S.A. 2C:21-8.1b; see also N.J.S.A. 2C:20-2b(4).

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If you have both determined that defendant is guilty of theft of identity and found that defendant derived a benefit from the theft, then you must go on to determine the value of that benefit. Specifically, indicate on the verdict sheet if the State has proven beyond a reasonable doubt that the benefit that defendant derived has a value that:

[CHOOSE APPROPRIATE SECTIONS]

- a. at least \$500, but is less than \$75,000;
- b. is less than \$500.

If you find that the benefit(s) derived were taken in impersonations or identity thefts committed pursuant to one scheme or course of conduct, the amounts may be added together to form a single total amount, whether derived from one source or several sources.¹⁸

**[CHARGE WHEN BENEFIT AT ISSUE IS
SOMETHING OTHER THAN MONEY]**

In this case, the State alleges that the benefit derived was something other than money. You must determine the value of that benefit. Value means the fair market value of the benefit at the time and place of the alleged impersonation or identity theft.¹⁹ Fair market value is the price that a buyer would be willing to pay and a seller would be willing to accept if both parties were aware of all the relevant surrounding circumstances and neither party were under any compulsion to buy or sell.

Here, the State has provided you with evidence of the value of the benefit by [describe testimony or other evidence used to establish value]. The State has the burden of proving the fair market value of the benefit involved. This means that you must be satisfied beyond a reasonable doubt that the benefit is worth what the State claims.

**[CHARGE IF DEFENDANT IS ALLEGED TO HAVE USED PERSONAL
INFORMATION OF OTHER(S) TO PURCHASE ALCOHOL/ TOBACCO/
A CONSUMER PRODUCT DENIED TO THOSE UNDER 18]**

Here the State has alleged that defendant used the personal identifying information of another to illegally (purchase (an) alcoholic beverage(s)) (obtain tobacco) (obtain a consumer product denied to persons under 18 years of age). If you find that the State has proven beyond a reasonable doubt that defendant purchased or obtained _____, you must then go on to make two additional

¹⁸ N.J.S.A. 2C:21-8.1b; see also N.J.S.A. 2C:20-2b(4).

¹⁹ See N.J.S.A. 2C:1-14m.

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factual findings. Specifically, you must first determine whether the State has proven that defendant received any benefit or service beyond the purchase or procurement of the consumer product beyond a reasonable doubt. Please do so by indicating “yes” or “no” on your verdict sheet.

Second, you must determine whether the State has proven that defendant perpetrated or attempted to perpetrate an additional injury or additional fraud upon another person beyond a reasonable doubt. I will remind you of the definitions of “injury” and “fraud.” To defraud means to deprive a person of property or any interest, estate, or right by deceit, artifice, trickery or cheat. To injure means to cause any damage that may ensue to the good name, standing, position or general reputation of the purported author of the statement. It may also mean to misrepresent or injuriously affect the sentiments, opinions, conduct, character, prospects, interest or rights of another.

[CHARGE IF ATTEMPT TO COMMIT ADDITIONAL INJURY OR ADDITIONAL FRAUD IS ALLEGED DURING THE COURSE OF USING PERSONAL INFORMATION OF OTHER(S) TO PURCHASE ALCOHOL/ TOBACCO/ A CONSUMER PRODUCT DENIED TO THOSE UNDER 18]

The law provides that a person attempts to cause additional injury or fraud if, acting purposely, he/she:²⁰

[Select appropriate section]

Engaged in conduct that would cause additional injury or fraud if the attendant circumstances were as a reasonable person would believe them to be;

[or]

Did or omitted to do anything with the purpose of causing injury or fraud without further conduct on his/her part. This means that defendant(s) did something designed to cause additional injury or fraud without having to take any further action.

[or]

Did or omitted to do anything which, under the circumstances as a reasonable person would believe them to be, was an act of omission constituting a substantial step in the course of conduct planned to culminate in additional injury or fraud. The step taken must be one that is strongly corroborative of defendant’s criminal purpose. The accused must be shown to have had a firmness of criminal purpose in light of the step(s) he/she had already taken. These preparatory steps must be

²⁰ Because all attempts must be purposeful, State v. Rhett, 136 N.J. 476, 485 (1994); State v. Robinson, 127 N.J. 3, 7 (1992), and because other portions of this statute include the requirement of purpose, the language in N.J.S.A. 2C:5-1a,

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substantial and not just very remote preparatory acts.²¹ I have already defined purposely for you.

**[RESUME STANDARD CHARGE WHERE DEFENDANT IS ALLEGED TO HAVE
USED PERSONAL INFORMATION OF OTHER(S) TO PURCHASE
ALCOHOL/ TOBACCO/A CONSUMER PRODUCT DENIED TO THOSE UNDER 18]**

If you find that the State has proven that defendant purposely attempted to cause additional injury or fraud beyond a reasonable doubt, then mark “yes” on your verdict sheet. However, if you find that the State failed to prove that defendant purposely attempted to cause additional injury or fraud beyond a reasonable doubt, then you must mark “no” on your verdict sheet.

“acting with the kind of culpability otherwise required for the commission of the crime,” should not be charged.

²¹

If impossibility or renunciation is at issue, consult the full Model Jury Charge on attempt. N.J.S.A. 2C:5-1.

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VERDICT SHEET

IMPERSONATION; THEFT OF IDENTITY- SECOND DEGREE²²

(N.J.S.A. 2C:21-17a)

1. How do you find as to Count _____ of the indictment, charging the defendant with (impersonation)(theft of identity):

_____ NOT GUILTY _____ GUILTY

(If your answer to Question Number 1 is guilty, please go on to Question 1a and Question Number 2. If your answer to Question Number 1 is not guilty, please stop and report your verdict.)

1a. If you have found the defendant guilty, how do you find as to the number of individual(s) whose identity defendant did steal or misuse:

_____ Five or more
_____ At least Two but less than Five
_____ One

(Please go on to Question Number 2)

2. If you have answered guilty to Question Number 1, how do you find as to the value of the amount that the defendant obtained the benefit of, or the value of the amount of the benefit that the defendant deprived another:

_____ \$75,000 or more
_____ at least \$500, but less than \$75,000
_____ less than \$500

²² This suggested verdict sheet is for use when a second-degree offense is alleged under N.J.S.A. 2C:21-17(c)(3). The different grading provisions of the statute are a product of the number of victims involved and/or the amount of the benefit obtained by the defendant or the amount the victim(s) are deprived of. See N.J.S.A. 2C:21-17(c)(1) to (c)(3). Appropriate changes should be made to this verdict sheet if only the third-degree or fourth-degree offense is originally charged in the indictment.