

AMENDED APPENDIX A

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**Committee on Standard Jury Instructions in Criminal Cases
Honorable F. Rand Wallis, Chair
SC16-1184**

20.6 WELFARE FRAUD — [FOOD ASSISTANCE IDENTIFICATION CARD] [AUTHORIZATION] [CERTIFICATE OF ELIGIBILITY FOR MEDICAL SERVICES] [MEDICAID IDENTIFICATION CARD]

§ 414.39(2), Fla. Stat.

To prove the crime of Welfare Fraud — [Food Assistance Identification Card] [Authorization] [Certificate of Eligibility for Medical Services] [Medicaid Identification Card], the State must prove the following two elements beyond a reasonable doubt:

Give 1a, 1b, and/or 1c as applicable.

- 1. ~~The defendant~~(Defendant) knowingly:**
 - a. used, transferred, acquired, trafficked, altered, forged or possessed**
 - b. attempted to use, transfer, acquire, traffic, alter, forge, or possess**
 - c. aided and abetted another person in the use, transfer, acquisition, traffic, alteration, forgery or possession of [a food assistance identification card] [an authorization for the expenditure of food assistance benefits] [a certificate of eligibility for medical services] [a Medicaid identification card].**
- 2. The use, transfer, acquisition, traffic, alteration, forgery, or possession was not authorized by law.**

The law requires *(insert the appropriate law pertaining to the relevant item).*

§ 414.39(5), Fla. Stat.

If you find (Defendant) guilty of Welfare Fraud, you must also determine if the State proved beyond a reasonable doubt whether the value of the public assistance or identification wrongfully [received] [retained] [misappropriated] [sought] [used] was:

- a. less than an aggregate value of \$200 in any 12 consecutive months.**

- b. an aggregate value of \$200 or more, but less than \$20,000 in any 12 consecutive months.
- c. an aggregate value of \$20,000 or more, but less than \$100,000 in any 12 consecutive months.
- a. \$100,000 or more in any 12 consecutive months.

§ 414.39(5)(e), Fla. Stat.

The value of a food assistance authorization benefit is the cash or exchange value unlawfully obtained by the fraudulent act.

Definitions. Give as applicable.

“Aid or abet” means help, assist, or facilitate.

§ 414.39(2)(b)

“Traffic” means ~~trade, sell, or exchange.~~

1. Buying, selling, stealing, or otherwise effecting an exchange of food assistance benefits issued and accessed via electronic benefits transfer (EBT) cards, electronic benefits transfer (EBT) card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
2. Attempting to buy, sell, steal, or otherwise effect an exchange of food assistance benefits issued and accessed via electronic benefits transfer (EBT) cards, electronic benefits transfer (EBT) card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
3. Exchanging firearms, ammunition, explosives, or controlled substances for food assistance benefits;
4. Purchasing with food assistance benefits a product with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling

the product purchased with food assistance benefits in exchange for cash or consideration other than eligible food; or

5. Intentionally purchasing products originally purchased with food assistance benefits in exchange for cash or consideration other than eligible food.

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.

“Knowingly” means with actual knowledge and understanding of the facts or the truth.

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.

Optional Definition

“Knowingly” means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason. (Devitt & Blackmar – Federal Jury Practice and Instructions, Sec. 16.07)

Give if applicable. § 414.39(7), Fla. Stat.

It is not a defense that the defendant repaid the assistance or services obtained [or returned the authorization or identification wrongfully obtained].

Inferences. Give as applicable.

§ 414.39(8)(a), Fla. Stat.

You may conclude that (defendant) did receive public assistance from the state if you find that there was a paid state warrant made to the order of the defendant.

§ 414.39(8)(b), Fla. Stat.

You may conclude that an identified recipient received public assistance from the state if you find that a transaction history generated by a Personal Identification Number (PIN) established a purchase or withdrawal by electronic benefit transfer.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2015 [175 So. 3d 782] and 2017.

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.

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).

The crime in § 414.39(2)(c), Florida Statutes, is enhanced from a first degree misdemeanor to a third degree felony if the defendant has a prior violation. It is unclear whether the existence of a prior violation will be treated as an element of the crime that must be found by the jury in a bifurcated proceeding, see *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000), or whether a prior violation can be proven to the judge at sentencing.

This instruction was adopted in 2017.