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Theft Offenses

~ CHAPTER 21 ~

Topics and concepts included in this chapter:

1. Penal Law offenses pertaining to Larceny.
2. Penal Law offenses relating to Robbery.
3. Penal Law offenses pertaining to Criminal Possession of Stolen Property.
4. Penal Law offenses relating to Theft of Services.
5. Identity Theft, Identity Fraud, and related Penal Law considerations.
6. Penal Law offenses pertaining to Unlawful Possession of Personal Identification Information.
7. The Penal Law offenses of Criminal Impersonation and False Personation.
8. Pertinent Penal Law sections relating to Forgery and Criminal Possession of a Forged Instrument.



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This chapter of your Police Student's Guide will explain to you the various laws that pertain to the theft of personal or public property or services, identity theft, forgery and the various ways that these crimes are committed.

PART I: LARCENY (PENAL LAW ARTICLE 155)

The crime of larceny consists of the **stealing** of another person's property. There are several ways to commit this act and several definitions for the term "property."

Property: The term "property" (Penal Law section 155.00, subd. 1) includes:

- Money;
- Personal property (e.g., a camera, a car);
- Real property (e.g., a home, an acre of land);
- A thing in action (e.g., accounts receivable, claims for damage);
- Evidence of debt or contract (e.g., a promissory note, a building contract);
- Any article, substance or thing of value of any kind, including gas, steam, water or electricity, which is provided for a fee;
- Computer data or a computer program;
- A credit card or debit card;
- An "access device," which 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;
- A "service," which includes, but is not limited to: labor, professional service, a computer service, transportation service, the supply of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use and the supplying of commodities of a public utility such as gas, electricity, steam and water. A ticket or equivalent instrument, which allows one to receive a service, is not in itself a service but constitutes property.
 - **Note:** Public utilities (e.g., gas, electricity, steam, water) are considered property. However, the **supplying** of these services to premises from an outside source by wires, pipes, etc., is considered the **giving of a service** rather than the sale or delivery of property. Where the property consists of gas, steam, water or



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electricity, which is provided for a fee, the value shall be the value of the property stolen in any consecutive twelve-month period.

- **Deprive:** to withhold property from a person permanently, or for so long a period of time that a major portion of its value is lost, dispose property in such a way as to render it unlikely that owner will recover it.
- **Owner:** When property is taken, obtained or withheld by one person from another person, an "owner" thereof means any person who has a right to possession thereof superior to that of the taker, obtainer or withholder.
- **Appropriate:** to exercise control over property to acquire the major portion of its economic value or dispose of property for the benefit of oneself.
- **Secret Scientific Material:** means a sample, culture, microorganism, specimen, record, recording, document, drawing or any other article, material, device or substance which constitutes, represents, evidences, reflects, or records a scientific or technical process, invention or formulation any part or phase thereof, and which is not, and is not intended to be, available to anyone other than the person or persons rightfully in possession.

LARCENY DEFINED (PENAL LAW 155.05)

A person commits larceny when:

- With intent to deprive another of property, or
- With intent to appropriate the same to himself/herself or a third person,

He or she wrongfully takes or he or she wrongfully obtains or he or she wrongfully withholds such property (for a period of time that the value of the property is diminished) from an owner.

- **Note:** This definition is very broad and is meant to cover the various ways in which property may be stolen.

Forms of Larceny:

1. **Common-Law Larceny by Trespassory Taking** - This type of larceny is the most common form of larceny. It is the taking of property by a trespass, or by a directly wrongful act; that is, outright stealing without the consent of the owner or possessor. Taking is defined as getting hold of, to get possession of, to grasp, to gain control over, or to seize.
 - **Example:** Kevin enters a candy store and puts a magazine under his jacket and a pack of gum in his pocket; then leaves the store



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without paying for the items. Kevin has committed larceny because he intentionally took goods offered for sale at a store with the intention of taking the same for his own use, without paying for them.

2. **Trickery** - Obtain property by deceit (con game).
3. **Embezzlement** - A person commits larceny by “embezzlement” when he or she wrongfully appropriates to himself/herself or to another, property of another in his/her care or custody. An important aspect of embezzlement is the betrayal of a legal duty. In other words, a person who commits embezzlement wrongfully appropriates to himself/herself or another, property that has been legally entrusted to him/her.
 - **Example:** An attorney is holding money belonging to a client and the attorney takes that money for his own personal use.
4. **False Pretense** - A person “obtains property by false pretense” when by any false token, pretense, or device, or common law larceny by trick, he or she obtains from another any property, with intent to defraud him/her or any other person.
 - **Example:** Alex buys a Blu-ray player at a department store with a credit card he knows is forged. By false token and with intent to defraud, he has obtained the property of another.
5. **False Promise** - A person “obtains property by false promise” when: with a scheme to defraud, he or she obtains property of another by means of a representation, expressed or implied, that he/she, or a third person will engage in a particular conduct, and he or she does not intend to engage in such conduct or does not believe that the third person intends to engage in such conduct.
 - **Example:** Norman approaches Mr. Smith and offers to remodel his home for \$5,000. Mr. Smith signs a contract for a remodeling job on his home and gives Norman \$200 as a down payment. Norman takes the money and promises that the job will be done next week. Norman does not intend to keep his promise. In this way, Norman has obtained property by false promise.
6. **Acquiring Property Lost, Mislaid or Delivered by Mistake** - A person commits larceny by “acquiring property lost, mislaid or delivered by mistake” when he or she comes into control of property of another that he or she knows to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the receiver, and



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intending to deprive the owner of the property, and he or she fails to take reasonable measures to give the property to a person entitled to it.

- **Example:** Jane discovers a mislaid purse in the restroom of a department store. She picks up the purse and walks out of the store with it. Later, she examines the contents and discovers money as well as the owner's identification. She does not take any reasonable measures to return the purse to the rightful owner.

7. Issuing a Bad Check - A person has committed this subdivision when he or she has also committed the crime of "Issuing a Bad Check," NYS Penal Law 190.05. This crime is completed when a person, or their representative, issues or passes a check knowing that there are insufficient funds to cover it, and they intend or believe the institution will refuse payment, and the institution refuses the payment.

- **Example:** Louie writes a check to cover the cost of purchasing a coat; however, Louie is aware that he has insufficient funds to cover the purchase of the coat.

8. Extortion - A person obtains property by "extortion" when he or she causes another person to deliver such property to himself/herself or a third person by means of placing him/her in fear that, if the property is not delivered, he or she or another will engage in a particular conduct. Extortion is the obtaining of another's property by the **wrongful use of fear**. The various threats that are used to instill fear to obtain another's property are as follows:

- Cause damage to property;
- Cause physical injury to some person in the future;
- Engage in other conduct constituting a crime;
- Accuse some person of a crime or cause criminal charges to be instituted against him/her;
- Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;
- Cause a strike, boycott or other collective labor group action injurious to some person's business;



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- Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
- Use or abuse one's position as a public servant by performing some act within or related to one's official duties, or by failing or refusing to perform an official duty, in such manner as to harm some person;
- Inflict any other harm which would not benefit the actor, but which is calculated to harm another person materially with respect to his/her health, safety, business, career, financial condition, reputation or personal relationship.
 - **Note:** Extortion is not a NYS Penal Law offense. When larceny by extortion is committed, the correct charge is **grand larceny**.

PETIT LARCENY – MISDEMEANOR (PENAL LAW 155.25)

Petit larceny, misdemeanor, is defined as the stealing of property. This section is used when the value of the property stolen is **\$1,000.00 or less** and does not fall within any of the special felony categories.

GRAND LARCENY – FELONY (PENAL LAW 155.30, 155.35, 155.40, 155.42, 155.43)

Grand larceny, felony, can be committed in several ways. Grand larceny occurs when a person steals property and when:

- The property is a **motor vehicle** (car, truck, bus, **but not a motorcycle**), with a value over \$100.00; or
- The property consists of a **religious item** with a value of \$100.00 or more which is kept for or used in connection with religious worship in any building, upon the curtilage of a building or structure used as a place of religious worship; or
- The property consists of an **access device** which the person intends to use unlawfully to obtain telephone service; or
- The property consists of an **automatic teller machine** or the contents of an automatic teller machine; or
- The property consists of **anhydrous ammonia** or liquefied ammonia gas and the actor intends to use, or knows another person intends to use, such anhydrous ammonia or liquefied ammonia gas to manufacture methamphetamine; or



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- The property consists of a **credit card or debit card**; or
- The property consists of a **gun** (firearm, rifle, or shotgun); or
- The property consists of a **public record**, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant; or
- The property is valued at an **amount over \$1000.00**; or
- The property, regardless of its value or nature, is taken by means of **extortion**; or
- The property consists of **secret scientific material**; or
- The property, regardless of its value or nature, is **taken from the person** of another. This includes “pick-pocketing” and “chain-snatching” where no injury is involved.
 - **Note:** When a person attempts but does not complete this crime, **attempted grand larceny** is charged. When larceny from a person is attempted, the crime of **jostling** (misdemeanor) **may** also be charged. Jostling is defined as intentionally and unnecessarily placing one’s hands in the proximity of a person’s pocket or handbag; or crowding a person while another places their hands in the proximity of another person’s pocket or handbag, when in a public place.

DISTINGUISHING BETWEEN GRAND LARCENY AND PETIT LARCENY

The difference between grand larceny and petit larceny is determined by asking the following three basic questions:

- What **type** of property was stolen? (car, watch, U.S. currency, etc.)
- What was the **value** of the property? (monetary value of property stolen)
- What **method** did the thief use to steal the property? (extortion, trespassory taking, from the person, etc.)
 - **Example:** A man approached a police officer and asked, “Can you help me? I’ve just been ripped off.” The officer asked, “What exactly was stolen?” The man replied, “My laptop computer.” The officer then asked, “How much was the computer worth?” The man responded, “I just paid \$1,600 for it yesterday.” Finally, the officer asked, “How was it stolen?” and the man said, “I left the lap top computer in the trunk of my car last night, and this morning I



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discovered that the trunk was broken into and the computer was gone.” In this case, the answer to the officer’s second question has determined that a grand larceny has occurred, because the computer is valued at over \$1000. You must conduct as thorough an investigation as possible. Questions should be asked to clear up any confusion, to ascertain facts, and to aid in the apprehension of perpetrators.

PART II: ROBBERY (PENAL LAW ARTICLE 160)

Robbery is a serious concern to both communities and police, due to the inherent danger of the crime and the **immediate threat or use of force** involved. You must remember to use extreme caution when responding to a robbery in progress and that sometimes (if not the first responder) it may be wise to patrol the perimeter of the scene, especially train stations or parks, rather than go directly to the scene (the perpetrator may have already fled the scene and may be attempting to escape unnoticed).

ROBBERY – FELONY (PENAL LAW 160.05, 160.10, 160.15)

Simply stated, robbery, **always a felony**, is the **forcible stealing** of property from another person. Robbery is committed when, in the course of committing a larceny, a person attempts, uses, or threatens the **immediate use of physical force upon another person** in order to:

- Prevent or overcome resistance in the taking of the property; or
- Prevent or overcome resistance in the retention of the property; or
- Compel the owner to give the property, or another to assist in the taking of the property.

DISTINGUISHING BETWEEN LARCENY AND ROBBERY

Consider the following scenario: If John puts his \$80 watch on a table and Joe steals it, the crime would be petit larceny, misdemeanor. However, if John had the watch in his possession, and Joe forced John to give it to him by saying, “Give me the watch or I’ll break your neck,” the crime would be robbery, felony.

What is the important difference? The important difference is the **use or threatened immediate use of force against a person**.

In both examples Joe obtained the property. In the first situation, Joe did not use or threaten the immediate use of force against John, so it was larceny. In the second example, Joe threatened the immediate use of force against John thereby making the act a robbery.



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ELEMENTS OF ROBBERY

- In robbery, a weapon is not required. A verbal threat is sufficient to constitute immediate force.
- An injury to the victim or non-participant is not required for a robbery. If an injury does occur, additional charges may apply.
- Robbery is an intentional crime. Therefore, if the crime is not completed (the property not taken), **attempted robbery** is the appropriate charge.
- In robbery, the force to the person cannot be threatened in the future. It must be in the present or immediate.
 - **Example:** Joe said, “Give me the watch or I’ll break your neck next week,” and John then gave Joe the watch. The crime would not be robbery, but grand larceny (by extortion).
- With robbery, the **force must be to the person**. If the threat of force involved damage to property, immediate or future, the crime is larceny, not robbery.
 - **Example:** If Joe had said to John, “Give me the watch or I’ll burn your house down,” it would be grand larceny by extortion, because the threat is not against a person.
 - **Note:** Knowing the degrees of robbery is not as important as knowing the elements of a robbery. The proper charge will be determined once the prisoner is brought to the precinct. The issue to keep in mind is that all robberies, no matter what the degree, are felonies.
 - **Note:** Keep in mind that only people can be robbed. The statement “My house was just robbed” is legally incorrect; people are robbed, houses are burglarized.



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PART III: CRIMINAL POSSESSION OF STOLEN PROPERTY (PENAL LAW 165)

In the previous pages, the offenses of petit larceny, grand larceny, and robbery have been discussed. Those offenses involve the taking of someone else's property. This crime examines the charge for possessing property that has been stolen.

CRIMINAL POSSESSION OF STOLEN PROPERTY – GENERALLY

A person is guilty of the offense of criminal possession of stolen property (CPSP) when he or she knowingly possesses stolen property with the intent to:

1. Benefit himself or herself or a person other than an owner of the property
or
2. Prevent the recovery of property by its owner.

- **Note:** It is not necessary to prove that the person being charged with this offense actually **stole** the property. All that is necessary is that the person “knowingly **possesses** stolen property.”

Definition of “Knowingly”

A person knowingly possesses property when he or she:

1. Knows (is aware of) that he or she possesses the property;
and
2. Knows (is aware of) that the property is stolen.

CRIMINAL POSSESSION OF STOLEN PROPERTY – MISDEMEANOR (PENAL LAW 165.40)

The misdemeanor charge of criminal possession of stolen property is based strictly on the dollar value of the property taken. It occurs when the value of the property is **\$1,000.00 or less**.

CRIMINAL POSSESSION OF STOLEN PROPERTY – FELONY (PENAL LAW 165.45, 165.50, 165.52, 165.54)

There are several ways that criminal possession of stolen property, felony, may be committed.



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Criminal possession of stolen property, felony, is committed when a person is ***in possession of stolen property and:***

- The property consists of a ***motor vehicle other than a motorcycle*** that has a value over \$100.00. If the property is a motorcycle, the value is the same as any other piece of property (it must be over \$1,000.00 for the felony); ***or***
- The property consists of a religious item of property having a value of \$100.00 or more kept for or used in connection with religious worship in any building or structure used as a place of religious worship; ***or***
- The property consists of a ***credit card, public benefit card, debit card;*** ***or*** The property has a value of an ***amount over \$1,000.00;*** ***or***
- The property is in the possession of a ***collateral loan pawnbroker*** or one who is in the business of buying, selling or otherwise dealing with property; ***or***
- The property consists of one or more ***firearms, rifles or shotguns,*** as defined in Section 265.00 of the Penal Law; ***or***
- The property consists of anhydrous ammonia or liquefied ammonia gas and the actor intends to use, or knows another person intends to use, such anhydrous ammonia or liquefied ammonia gas to manufacture methamphetamine.

PRESUMPTIONS RELATED TO POSSESSION OF STOLEN PROPERTY:

- A person who knowingly possesses stolen property is presumed to possess it with intent to benefit himself or another or to impede the recovery by the owner.
- Pawnbrokers who possess stolen property are presumed to know that property is stolen.
- Person in possession of 2 or more stolen credit cards, debit cards and public benefit cards is presumed to know they're stolen.

THEFT OF ELECTRONIC DEVICES

In situations where a cell phone, in a prisoner's possession, was previously reported stolen by a complainant, the detective squad will confer with the investigator of the original theft and determine if additional charges are warranted.



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The perpetrator must be positively identified by the complainant through a photo array and/or lineup to be charged with robbery or grand larceny. If the complainant cannot identify the perpetrator then the charge of criminal possession of stolen property would apply.

When testifying during direct examination, lead the jury through the investigation relating details of the arrest from receipt of the complaint to apprehension. Explain the results of tracking information.

You may charge criminal possession of stolen property based on the following types of investigations:

- IMEI search
- Phone Finder applications/Tracking applications
 - **Note:** On cross-examination, remember the use of cell phone tracking is a legitimate investigative tool. You do not have to be familiar with cell phone tracking technology to use it when conducting an investigation.

THEFT OF SERVICES (PENAL LAW ARTICLE 165.15)

While larceny and robbery involve the unlawful taking of property, theft of services involves the *unlawful obtaining of a service* (not property). A person can be guilty of theft of services in one of the following eleven ways:

1. Intentional ***use of a stolen credit card or debit card*** to obtain a service;
2. Avoiding payment for ***restaurant, hotel, or motel service*** or similar hospitality type service;
3. Avoiding payment for ***transportation services***;
4. Avoiding payment for ***telecommunications, cable, gas, steam, sewer or water services***;
5. Intentionally avoiding payment for ***telephone services*** via an access device;
6. Avoiding payment for ***metered services***, by tampering with the meter device;
7. Knowingly accepting or receiving the ***use and benefit of services which should pass through a meter*** but have been diverted or altered;
8. Intentional ***tampering with public utility service*** to receive these services without consent;



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9. Intentionally avoid payment for ***admission to a theatre or concert hall*** or mechanical, ski-related lifting devices;
10. Wrongful use of ***commercial labor, equipment or facilities***;
11. Intentional avoidance of payment for the use of a ***computer or computer services***.

PART IV: OFFENSES INVOLVING IDENTITY THEFT

IDENTITY THEFT VS. IDENTITY FRAUD

It is important to understand the distinction between identity theft and identity fraud. Identity theft is the ***actual charge*** pertaining to the fraudulent and unauthorized use of another person's information to assume the identity of that person. Identity fraud is ***not a charge*** per se, under any New York State statute.

Identity fraud happens when a person creates an identity, either unjustifiably from a real person or fictitiously and assumes that identity. A person who commits identity theft also engages in identity fraud. However, not every instance of identity fraud involves the crime of identity theft.

Definitions (Penal Law 190.77)

- **Personal Identifying Information:** any name, number, code, or information that may be used alone or in conjunction with other such information to assume the identity of another person. Aside from the common identifiers (name, address, Social Security number), this includes computer passwords, personal identification numbers, unique biometric data (fingerprint, voice print, retinal image), copy of signature, and mother's maiden name.
- **Personal Identification Number:** any number or code which may be used alone or in conjunction with any other information to assume the identity of another person or access financial resources or credit of another person.

IDENTITY THEFT – MISDEMEANOR (PENAL LAW 190.78)

A person is guilty of identity theft (misdemeanor) when he or she knowingly, and with intent to defraud, assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using ***personal identifying information*** of that other person, and:

1. Obtains goods, money, property or services or uses credit in the name of



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such other person or causes financial loss to such person or to another person or persons; **or**

2. Commits a **class A misdemeanor** or higher level crime.

IDENTITY THEFT – FELONY (PENAL LAW 190.79, PENAL LAW 190.80)

A person is guilty of identity theft (felony) when he or she knowingly, and with intent to defraud, assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using **personal identifying information** of that other person, and thereby:

1. Obtains goods, money, property or services or uses credit in the name of such other person in an aggregate amount that **exceeds five hundred (\$500) dollars; or**
2. Causes financial loss to such person or to another person or persons in an aggregate amount that **exceeds five hundred (\$500) dollars; or**
3. Commits or attempts to commit a **felony** or acts as an accessory to the commission of a felony; **or**
4. Commits the crime of identity theft 3rd degree as defined in section 190.78 of this article (misdemeanor) and has been **previously convicted** within the last five years of certain identity theft and larceny crimes (see P.L. 190.79 & 190.80 for complete list of crimes).

AGGRAVATED IDENTITY THEFT – FELONY (PENAL LAW 190.80)

A person is guilty of aggravated identity theft when he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using **personal identifying information** of that person, and knows that such person is a member of the armed forces, and knows that such member is presently deployed outside of the continental United States and:

1. Thereby obtains goods, money, property or services or uses credit in the name of such member of the armed forces in an aggregate amount that **exceeds five hundred (\$500) dollars; or**
2. Thereby causes financial loss to such member of the armed forces in an aggregate amount that **exceeds five hundred (\$500) dollars.**



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UNLAWFUL POSSESSION OF PERSONAL IDENTIFICATION INFORMATION – MISDEMEANOR (PENAL LAW 190.81)

A person is guilty of unlawful possession of personal identification information (misdemeanor) when he or she knowingly possesses a person's

- financial services account number or code
- checking/savings account number or code
- brokerage account number or code
- credit card account number or code
- debit card number or code
- automated teller machine number or code
- personal identification number
- mother's maiden name
- computer system password
- electronic signature or
- unique biometric data (fingerprint, voice print, retinal image)

Knowing such information is intended to be used in furtherance of the commission of frauds as defined in Article 190 of the Penal Law.

UNLAWFUL POSSESSION OF PERSONAL IDENTIFICATION INFORMATION – FELONY (PENAL LAW 190.82)

A person is guilty of unlawful possession of personal identification information (felony) when he or she knowingly possesses **250 or more of the above items** knowing such information is intended to be used in furtherance of the commission of frauds as defined in Article 190 of the Penal Law.

- **Note:** Identity theft laws are intended for persons who attempt to commit financial crimes and terrorist acts, or other serious unlawful acts. They are not intended to be enforced against underage persons who attempt to purchase alcohol or cigarettes, or attempt to enter age-restricted locations (e.g., bars and clubs).

UNLAWFUL POSSESSION OF A SKIMMER DEVICE – MISDEMEANOR (PENAL LAW 190.85)

A person is guilty of unlawful possession of a skimmer device when he or she possesses a skimmer device with the intent that such device be used in furtherance of the commission of the crime of identity theft or unlawful possession of personal identification information.

- **Note:** For the purposes of this offense, "skimmer device" means a device designed or adapted to obtain personal identifying information from a credit card, debit card, public benefit card, access card or device, or other



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card or device that contains personal identifying information.

CRIMINAL IMPERSONATION

Generally, the crime of criminal impersonation involves the act of pretending or representing oneself to be another (with **knowledge** that such representation is **false**) in order to **obtain a benefit**, or to **injure** or **defraud** another. This crime is usually committed when attempting to commit other crimes such as burglary, robbery, larceny, etc. In such cases, the other crime – burglary, larceny, etc. – should also be charged. In the context of these offenses, the word **defraud** means to cheat or deprive another of something by deception.

CRIMINAL IMPERSONATION – MISDEMEANOR (PENAL LAW 190.25)

There are four ways in which Criminal Impersonation - Misdemeanor can be committed:

1. Falsely Representing Another Person (other than a public servant)

A person may be charged with this when he or she impersonates another (non-public servant), and while in the assumed character, commits an act with intent to obtain a benefit, injure (physically or monetarily), or defraud another.

2. Falsely Representing an Organization

A person may be charged with this when he or she pretends to be a representative of some person or organization **and** commits an act in this capacity with intent to obtain a benefit, or to injure (physically or monetarily), or to defraud another.

3. Falsely Representing a Public Servant

The individual:

- Pretends to be a public servant; **or**
- Wears or displays without authority any uniform or badge by which such public servant is lawfully distinguished; **or**
- Falsely expresses by his or her own words or actions that he or she is a public servant or is acting with approval or authority of a public agency or department; **and**

He or she does so with intent to induce another to submit to such pretended official authority, to solicit funds, or otherwise cause another to act in reliance upon that pretense.

It is important to note that a person pretending to be a public servant can be charged with criminal impersonation **only** if he or she does so with intent to induce



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another person to act in accordance with his or her pretense of official authority.

- **Example:** Al rents a police uniform to wear to a party. Could he be charged with the crime of criminal impersonation? No. Al is wearing the uniform only as a costume and not with the intent to induce anyone to believe he really is a police officer. However, if during a campus riot, some students put on police uniforms and attempt to direct police reinforcements away from the scene of the riot; the students dressed in the uniforms acted with the intention of inducing legitimate police officers to follow their direction, they have therefore committed criminal impersonation.

4. Falsely Representing Another Person by Communication via Internet Website or Electronic Means

A person may be charged with this when he or she impersonates another by communication via internet website or electronic means with intent to obtain a benefit or injure or defraud another, or by such communication pretends to be a public servant in order to induce another to submit to such authority or act in reliance on such pretense.

CRIMINAL IMPERSONATION – FELONY (PENAL LAW 190.26)

A person may be charged with this offense when he or she:

1. **Impersonates a Police Officer or Federal Law Enforcement Officer and such pretense is for the purpose of committing or attempting to commit a felony:** The Penal Law subdivision defining this offense states that it occurs when a person pretends to be a police officer or federal law enforcement officer or wears or displays without authority; any uniform, badge or other insignia or facsimile thereof, by which such police officer or federal law enforcement officer is lawfully distinguished or expresses by his or her words or actions that he or she is acting with the approval or authority of any police department or any agency that employs federal law enforcement officers **and** acts with intent to induce another to submit to such pretended official authority or otherwise to act in reliance upon said pretense and in the course of such pretense commits or attempts to commit a **felony**.

- **Example:** Joe finds a police officer's shield. He knocks on Mrs. Teller's door, shows her the shield and tells her she must leave the house immediately. After Mrs. Teller leaves, Joe enters and takes all of her jewelry. Joe can be charged with criminal impersonation, felony, because he pretended to be a police officer and Mrs. Teller submitted to that authority by leaving the house where Joe then committed a felony (burglary).



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Remember that a police officer is considered a public servant, but a public servant is **not always a police officer**. In order to charge the felony, criminal impersonation, a person must imply that he is a police officer or federal law enforcement officer or working under the authority of a police department or any agency that employs federal law enforcement officers.

2. Impersonates a physician and orders a prescription: Pretending to be a duly licensed physician or other person authorized to issue a prescription for any drug or any instrument or device used in the taking or administering of drugs for which a prescription is required by law, he communicates to a pharmacist an **oral prescription** which is required to be reduced to writing pursuant to Public Health Law Section 3332.

- **Note:** If the person were to produce a prescription in writing the charge would be forgery.

FALSE PERSONATION – MISDEMEANOR (PENAL LAW 190.23)

A person may be charged with false personation, a misdemeanor, when **after being informed of the consequences of such act**, he or she knowingly misrepresents his or her actual **name, date of birth, or address** to a police officer or peace officer with the intention of preventing such police officer or peace officer from ascertaining such information.

- **Example:** Police Officer Murray stops John Ellis for disorderly conduct. Officer Murray wants to issue him a summons for this offense and asks for identification. Attempting to avoid the summons, John states that his name is Roy White. Officer Murray warns him that a misrepresentation of his name will result in a misdemeanor charge of false personation. John insists his name is Roy White. After attempting to verify this, Officer Murray discovers that “Roy White” is really John Ellis and places him under arrest for false personation.

PART V: FORGERY AND FORGED DOCUMENTS (PENAL LAW 170)

FORGERY – MISDEMEANOR (PENAL LAW 170.05)

A person commits forgery, misdemeanor, when:

- With the intent to defraud, deceive, or injure another person,
- He or she falsely makes, completes, or alters,



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- A written instrument.

This section of law is a “catch all” for every act of forgery not amounting to the felony categories (Penal Law. 170.10, 170.15). The crime of forgery is complete when the written instrument is made or altered with fraudulent intent. The actual use of the instrument such as a check, will, letter, deed, etc., is not necessary.

It is not forgery for a person to sign the name of another person to a written instrument with permission, or in the honest, but mistaken, belief that he or she had the authority to do so.

- **Note:** Forgery is still committed even if the forged name is not a real one. When used with the intent to defraud or deceive, a wholly fictitious name may still constitute the crime of forgery.

FORGERY – FELONY (PENAL LAW 170.10, 170.15)

A person commits forgery, felony, when:

- With intent to defraud, deceive, or injure another person,
- He or she falsely makes, completes, or alters a written instrument **and**
- The written instrument is, or purports to be, any one of the following:
 - A deed, will, contract, assignment, commercial instrument, **credit card**, or other instrument that may affect a legal right, interest, obligation, or status;
 - A public record or an instrument filed or required or authorized by law to be filed in or with a public office or public servant;
 - A written instrument officially issued or created by a public office, public servant, or governmental instrumentality;
 - Part of an issue of tokens, public transportation transfers, certificates or other articles, manufactured and designed for use as symbols of values usable in place of money of the purchase of property or services (i.e., **MetroCard**);
 - A prescription of a duly licensed physician or other person authorized to issue the same for any drug or instrument or device used in the taking or administering of drugs for which a prescription is required by law;
 - Part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental instrumentality;
 - Part of an issue of stock, bonds, or other instruments representing interest in or claims against a corporate or other organization or its



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property.

- **Example:** A person steals a prescription pad from a doctor's office and forges a prescription for himself and fraudulently signs the doctor's name.

CRIMINAL POSSESSION OF A FORGED INSTRUMENT – MISDEMEANOR (PENAL LAW 170.20)

A person is guilty of criminal possession of a forged instrument (misdemeanor) when, with knowledge that it is forged and with intent to defraud, deceive, or injure another, he utters or possesses a forged instrument.

CRIMINAL POSSESSION OF A FORGED INSTRUMENT – FELONY (PENAL LAW 170.25, 170.30)

A person is charged with this offense when he or she possesses any of the above forged instruments (listed under Forgery – Felony, step 3), including a forged **credit card** or **debit card**.

- **Note:** If he or she possesses two or more forged instruments, each of which purports to be a credit card or debit card, he or she is **presumed** to possess them with the knowledge that they are forged and with intent to defraud, deceive or injure another.