

1 **14-1680. Theft of credit card; essential elements.**

2 For you to find the defendant guilty of theft of a credit card [as charged in Count
3 _____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the
4 following elements of the crime:

5 1. The defendant took from the [person]² [possession³] [custody] [control] of another
6 a credit card⁴ issued to _____ without the cardholder's⁴ consent;

7 2. At the time the defendant took this credit card, the defendant intended to
8 permanently deprive the cardholder of the card;

9 3. This happened in New Mexico on or about the _____ day of
10 _____, _____.

11 USE NOTES

12 1. Insert the count number if more than one count is charged.

13 2. Use applicable alternative.

14 3. UJI 14-130, "Possession" defined, is to be given if the question of possession is in
15 issue.

16 4. If the jury requests a definition of "credit card" or "cardholder," the statutory
17 definition set forth in Section 30-16-25 NMSA 1978 is to be given.

18

19 **Committee commentary.** — The purpose in enacting legislation dealing specifically with credit
20 cards was that the existing structure of law was inadequate to deal with the socio-economic
21 phenomenon of credit card transactions. While certain aspects of credit card transactions may be
22 sufficiently covered by traditional statutes regulating forgery and fraud, inter alia, other aspects
23 did not fall within the existing legal framework. Therefore, for example, because of the negligible

1 value of the credit card itself, the theft of a credit card, if charged as larceny under [~~Section 30-16-~~
2 ~~1-NMSA-1978~~]NMSA 1978, Section 30-16-1 (2006), would be a petty misdemeanor, whereas
3 under the specific law, [~~Section 30-16-26 NMSA-1978~~]NMSA 1978, Section 30-16-26 (1971),
4 theft of a credit card is a [~~fourth degree~~]fourth-degree felony.

5 The first enactment of credit card legislation in New Mexico was in 1963 (1963 N.M. Laws, ch.
6 86, § 1). More detailed legislation was enacted in 1969 (1969 N.M. Laws, ch. 73, §§ 1-10), and in
7 1971, (1971 N.M. Laws, ch. 239, §§ 1-14) the present statutory scheme was signed into law.
8 [~~Sections 30-16-25 through 30-16-38 NMSA-1978~~]NMSA 1978, Sections 30-16-25 to -38 (1971,
9 as amended through 2006) evidence an increasing complexity in credit card law which reflects the
10 increasing complexity in types of credit cards and transactions made with them.

11 Because one person could commit numerous statutory offenses with a credit card, the committee
12 is of the opinion that an example of possible combinations, and any resultant problems, will be
13 helpful. An individual could steal eight credit cards; sell or give away two of them; change the
14 numbers on the others; sign the name of the cardholder on the back of the cards; purchase
15 merchandise with one of the cards; and have in [~~his~~]the individual's possession, the machinery
16 necessary to alter credit cards. This could give rise to charges under the following statutory
17 sections: § 30-16-26 [~~NMSA-1978~~]- Theft of a credit card; § 30-16-28 [~~NMSA-1978~~]- Fraudulent
18 transfer of a credit card; § 30-16-30 [~~NMSA-1978~~]- Dealing in credit cards of another; § 30-16-
19 31 [~~NMSA-1978~~]- Forgery of a credit card; § 30-16-32 [~~NMSA-1978~~]- Fraudulent signing of a
20 credit card or sales slips or agreements; § 30-16-33 [~~NMSA-1978~~]- Fraudulent use of credit cards;
21 and § 30-16-35 [~~NMSA-1978~~]- Possession of machinery designed to reproduce credit cards.
22 Additionally, because these statutes have an applicability clause, § 30-16-38[~~NMSA-1978~~], the

1 individual could also be charged with larceny, § 30-16-1[~~NMSA 1978~~], fraud, NMSA 1978, § 30-
2 16-6 (2006) [~~NMSA 1978~~] and forgery, NMSA 1978, § 30-16-10 (2006) [~~NMSA 1978~~].

3 Obviously, problems may arise as to multiplicitous charging and merger. Prosecutorial discretion
4 will have to be observed, because public policy seems to prohibit such [~~"overzealousness"~~]
5 "overzealousness" in charging.

6 Section 30-16-26 [~~NMSA 1978~~] provides that [~~taking~~] "[Taking a credit card without consent
7 includes obtaining it by conduct defined or known as [~~"statutory~~] statutory larceny, common-law
8 larceny by trespassory taking, common-law larceny by trick, embezzlement or obtaining property
9 by false pretense, false promise or [~~extortion."~~] extortion." The elements of each of these crimes
10 are set forth in Wayne R. LaFave & Austin W. Scott, Jr., [~~Criminal Law~~] Handbook on Criminal
11 Law, (1st ed. 1972) as follows:

12 [~~Common law larceny by trespassory taking:~~

13 ~~trespassory (either constructive or actual)~~

14 ~~taking dominion over~~

15 ~~carrying away (slight distance is enough)~~

16 ~~personal property~~

17 ~~of another~~

18 ~~with intent to steal or deprive owner of perma-~~

19 ~~nent possession or of possession for unreasonable period of time.~~

20 ~~LaFave & Scott at p. 622.~~

21 ~~Statutory larceny:~~

22 ~~enlarged types of personal property included within common law larceny.~~

23 ~~LaFave & Scott at p. 622.~~

- 1 ~~Common law embezzlement:~~
2 ~~fraudulent conversion of property~~
3 ~~of another~~
4 ~~by one in lawful possession of it.~~
5 ~~LaFave & Scott at p. 644.~~
- 6 ~~Common law obtaining property by false pretenses:~~
7 ~~false representation of material present or past~~
8 ~~fact which causes victim~~
9 ~~to pass title~~
10 ~~to a wrongdoer~~
11 ~~who knows his misrepresentation is false~~
12 ~~and intends to defraud victim.~~
13 ~~LaFave & Scott at p. 655.~~
- 14 ~~Common law larceny by trick:~~
15 ~~Same as common law obtaining property by false pretenses except defendant obtains "possession"~~
16 ~~as opposed to "title" by false pretenses.~~
17 ~~LaFave & Scott at p. 627.~~
- 18 ~~Extortion (assume statutory as set forth in Section 30-16-9):~~
19 ~~See UJI 14-1642 for essential elements of statutory extortion.~~
20 ~~LaFave & Scott at p. 704.]~~
- 21 Common law larceny by trespassory taking: (1) trespassory (either constructive or actual), (2)
22 taking dominion over, (3) carrying away (slight distance is enough), (4) personal property

1 of another, (5) with intent to steal or deprive owner of permanent possession or of possession for
2 unreasonable period of time. *Id.* at 622-44.

3 Statutory larceny: enlarged types of personal property included within common law larceny. *Id.* at
4 622.

5 Common law embezzlement: (1) fraudulent, (2) conversion of, (3) property, (4) of another, (5) by
6 one in lawful possession of it. *Id.* at 644.

7 Common law obtaining property by false pretenses: (1) false representation of material present or
8 past fact, (2) which causes victim, (3) to pass title, (4) to a wrongdoer, (5) (a) who knows their
9 misrepresentation is false, and (b) intends to defraud victim. *Id.* at 655.

10 Common law larceny by trick: Same as common law obtaining property by false pretenses except
11 defendant obtains “possession” as opposed to “title” by false pretenses. *Id.* at 627.

12 Extortion (assume statutory as set forth in NMSA 1978, Section 30-16-9 (1963)). See UJI 14-1642
13 NMRA for essential elements of statutory extortion. LaFave & Scott, *supra*, at 704.

14 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]