

THEFT OF SERVICES
(Violation or A Misdemeanor)¹
(Avoiding Service Charges By Artifice,
Trick, Deception, Code or Device)
PENAL LAW 165.15(4)(d)
(Committed on or after Nov. 1, 1987)

The _____ count is Theft of Services.

Under our law, a person is guilty of Theft of Services when, with the intent to avoid payment by himself or herself [or another person] of the lawful charge for any telecommunication service including, without limitation, cable television service [or gas service] [or steam service] [or sewer service] [or water service] [or electrical service] [or telegraph service] [or telephone service] which is provided for a charge or compensation, that person

Select appropriate alternative:

obtains or attempts to obtain such service for himself or herself (or another person)

avoids or attempts to avoid payment for such service by himself or herself (or another person)

by means of any artifice, trick, deception, code or device.

[NOTE: Add if in issue:

For purposes of this charge, a device does not include any non-decoding and non-descrambling channel frequency converter or any television receiver-type accepted by the Federal

¹If cable television services are involved, a violation of Penal Law 165.15(4)(d) is a violation, unless the stolen service has a value in excess of \$100 or the defendant has a prior conviction for theft of services under this subsection, in which case it is a Class A Misdemeanor. If services other than cable television are involved, the crime is a Class A Misdemeanor.

Communications Commission.]

[NOTE: If cable television service is involved and the defendant is charged with this crime as a Class A Misdemeanor because the value of the service exceeded \$100, add the following:

and the value of such cable television service exceeds one hundred dollars (\$100).]²

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "intent," ["cable television service,"] "obtain," [and] "attempt" [and "value"].

INTENT means conscious objective or purpose.³ Thus, a person acts with intent to avoid payment by himself or herself [or another person] of a lawful charge for a service when that person's conscious objective or purpose is to avoid payment of a lawful charge for such service.

[Here add, from "Additional Charges" at the end of this Article, any Penal Law § 165.15(4) presumptions which apply.]

²If cable television service is involved, this crime is elevated from a violation to a Class A Misdemeanor only if either of two alternative aggravating elements is present--the one stated in the text, and:

"and [the defendant] has been previously convicted of theft of services under [Penal Law § 165.15(4)]."

If this latter element applies, it must be charged in a special information. The defendant must be arraigned upon the special information in accordance with the procedure set forth in CPL § 200.60(3). If, upon such arraignment, the defendant admits the element, the court **must not make any reference to it in the definition of the offense or in listing the elements of the offense**. But if the defendant denies the element or remains mute, the court must add the element to the definition of the crime and the list of elements. See, *People v. Cooper*, 78 NY2d 476 (1991).

³See Penal Law § 15.05(1).

[CABLE TELEVISION SERVICE means any and all services provided by or through the facilities of any cable television system, closed circuit coaxial cable communications system, or any microwave or similar transmission service used in connection with any cable television system or other similar closed circuit coaxial cable communications system.⁴]

OBTAIN includes, but is not limited to, the bringing about of a transfer, or purported transfer, of a service or of a legal interest therein, whether to the obtainer or another person.⁵

A person ATTEMPTS to obtain [*or* avoid payment for] a service by means of artifice, trick, deception, code or device when he or she intends to do so and engages in conduct which tends to effect that objective.⁶

[VALUE means the market value of the service at the time and place of the crime.⁷]

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

1. That on or about (date), in the county of (county), the defendant, (defendant's name),

[Select appropriate alternative:

obtained attempted to obtain for himself/herself

⁴See Penal Law § 155.00(9).

⁵See Penal Law § 155.00(2).

⁶See Penal Law § 110.00.

⁷See Penal Law § 155.20(1), which also provides that, if market value "cannot be satisfactorily ascertained," value means "the cost of replacement of the property within a reasonable time after the crime."

(or another person)

or avoided or attempted to avoid payment by himself/herself (or another person) for]

any telecommunications service including, without limitation, cable television service [or gas service] [or steam service] [or sewer service] [or water service] [or electrical service] [or telegraph service] [or telephone service], which is provided for a charge or compensation, by means of an artifice, trick, deception, code or device; and

2. That the defendant did so with the intent to avoid payment by himself/herself [or another person] of the lawful charge for such service.

[If whether the device was FCC-approved is in issue, add:

and

3. That such device was not a non-decoding and non-descrambling channel frequency converter or any television receiver-type accepted by the Federal Communications Commission.]

[If cable television service is involved and the defendant is charged with this crime as a Class A Misdemeanor because the value of the service exceeded \$100, add:

and

- 3[4]. That the value of such service exceeded one hundred

dollars (\$100).]⁸

Therefore, if you find that the People have proven beyond a reasonable doubt both [each] of those elements, you must find the defendant guilty of the crime of Theft of Services as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both [any one or more] of those elements, you must find the defendant not guilty of the crime of Theft of Services as charged in the _____ count.

⁸If cable television service is involved, the defendant is charged with this crime as a Class A Misdemeanor on the basis of a prior conviction, and the defendant admitted the prior conviction, then list *only* the first two (or three) elements for the jury.

If the prior conviction element is applicable and the defendant has denied that element or remained mute, add the following:

"and 3. [or 4.] That the defendant had been previously convicted of theft of services under Penal Law § 165.15(4).