

THEFT OF SERVICES¹
(Telephone Services)
Penal Law § 165.15(5)
(Committed on or after Nov. 1, 1993)

The (*specify*) count is Theft of Services.

Under our law, a person is guilty of Theft of Services when, with intent to avoid payment by himself or herself [*or* another person] of the lawful charge for any telephone service which is provided for a charge or compensation, that person sells [*or* offers for sale] [*or* makes available] [*or* uses], without consent, an existing [*or* cancelled] [*or* revoked] access device.

The following terms used in that definition have a special meaning:

INTENT means conscious objective or purpose.² Thus, a person acts with intent to avoid payment of the lawful charge for telephone service when that person's conscious objective or purpose is to avoid payment of the lawful charge for such service.

An ACCESS DEVICE 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.³

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

¹The same crime is elevated to a Class E felony if either the stolen services have a value in excess of \$1,000 or the defendant has been convicted under Penal Law § 165.15(5)(a) within the previous five years. When one of those circumstances applies, see the charge at 165-1100, post.

²See Penal Law § 15.05(1).

³See Penal Law § 165.15(5).

1. That on or about (date), in the county of (county), the defendant, (defendant's name), sold [or offered for sale] [or made available] [or used] an existing [or revoked] [or cancelled] telephone service access device without consent; and
2. That the defendant did so with the intent to avoid payment by himself/herself [or another person] of the lawful charge for a telephone service which was provided for a charge or compensation.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.